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Education Today

Why Johnny Can't Write — *Heather Mac Donald*

Levin, Jeffries, and the Fate of Academic Autonomy — *Nathan Glazer*

Towards Excellence in Education — *Chester E. Finn, Jr.*

The Courts vs. Educational Standards — *Michael Heise*

Intelligence and the Social Scientist

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The Decline of the American Mafia — *Peter Reuter*

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CONTENTS

Education Today:

I. Why Johnny Can't Write — *Heather Mac Donald* — 3

II. Levin, Jeffries, and the Fate of Academic Autonomy — *Nathan Glazer* — 14

III. Towards Excellence in Education — *Chester E. Finn, Jr.* — 41

IV. The Courts vs. Educational Standards — *Michael Heise* — 55

Intelligence and the Social Scientist — *Leon R. Kass* — 64

Religion's Challenge to Psychology — *Lewis M. Andrews* — 79

The Decline of the American Mafia — *Peter Reuter* — 89

Books in Review:

Overcoming Law, by Richard Posner
Jay P. Lefkowitz — 100

Behind the Mule, by Michael Dawson
Abigail Thernstrom — 106

Greater Expectations, by William Damon
Susan Kristol — 111

Labyrinths of Prosperity, by Reuven Brenner
John E. Berthoud — 116

Generation at the Crossroads, by Paul Loeb
Jonah Goldberg — 120

Contributors — 125

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Why Johnny can't write

HEATHER MAC DONALD

AMERICAN employers regard the nation's educational system as an irrelevance, according to a Census Bureau survey released in February of this year. Businesses ignore a prospective employee's educational credentials in favor of his work history and attitude. Although the census researchers did not venture any hypotheses for this strange behavior, anyone familiar with the current state of academia could have provided explanations aplenty.

One overlooked corner of the academic madhouse bears in particular on graduates' job-readiness: the teaching of writing. In the field of writing, today's education is not just an irrelevance, it is positively detrimental to a student's development. For years, composition teachers have absorbed the worst strains in both popular and academic culture. The result is an indigestible stew of 1960s liberationist zeal, 1970s deconstructivist nihilism, and 1980s multicultural proselytizing. The only thing that composition teachers are *not* talking and writing about these days is how to teach students to compose clear, logical

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prose.

Predictably, the corruption of writing pedagogy began in the sixties. In 1966, the Carnegie Endowment funded a conference of American and British writing teachers at Dartmouth College. The event was organized by the Modern Language Association and the National Conference of Teachers of English. The Dartmouth Conference was the Woodstock of the composition professions: It liberated teachers from the dull routine of teaching grammar and logic.

The Dartmouth Conference rejected what was called a "transmission model" of English in favor of a "growth model." In a transmission mode, teachers pass along composition skills and literary knowledge. In a growth mode, according to Joseph Harris, a professor of English at the University of Pittsburgh, they focus on students' "experience of language in all its forms"—including ungrammatical ones. A big problem with the transmission model of English, apparently, is that it implies that teachers actually know more than their students do. In the growth model, in contrast, the teacher is not an authority figure; rather, he is a supportive, nurturing friend, who works with, rather than challenges, what a student has to say. Dartmouth proponents claimed that improvement in students' linguistic skills need not come through direct training in grammar and style but, rather, would flower incidentally as students experiment with personal and expressive forms of talk and writing.

The Dartmouth Conference and subsequent writing pedagogy reflected the political culture of the time. It was anti-authoritarian and liberationist; it celebrated inarticulateness and error as proof of authenticity. But it was also a response to the looming problem of race. City University of New York (CUNY) began the nation's first academic affirmative-action program in 1966; other schools would soon follow suit. The movement to legitimate black English began at that time. Confronted with a barrage of students who had no experience in formal grammar or written language, it was highly convenient for professors to learn that students' natural way of speaking and writing should be preserved, not corrected.

There is a final ideological strand in composition pedagogy that has its roots in the late 1960s: Marxism. Teachers on the

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radical left began arguing that the demand for literacy oppresses the masses. Writing in *Radical Teacher*, Massachusetts Institute of Technology humanities professor Wayne O'Neil explains that "it has become important for the ruling class to exclude the potentially radicalizing elements of higher education from the colleges. Thus everywhere along the scale of education there is a relentless march toward the basics." James Sledd, professor emeritus of English at the University of Texas at Austin, writes in *College English* that standard English is "essentially an instrument of domination," and that coercing students to speak properly conditions them to accept the coercion of capitalism. Richard Ohmann, humanities professor at Wesleyan University, has pronounced the "decline of literacy ... a fiction, if not a hoax."

The political process

The Dartmouth Conference gave rise to what became known as the *process* school of composition. Peter Elbow of Evergreen State College is its most influential practitioner. Not all of Elbow's ideas are bad. He emphasizes that writing is a continuous process, composed mostly of rewriting. He encourages students to think of their essays in terms of multiple drafts, rather than single-shot efforts. He has vigorously promoted "free writing," a warm-up exercise in which the author writes continuously for a fixed period of time, uninhibited by grammar, punctuation, or logic.

But the drawbacks of the process school cancel its contributions. Elevating process has driven out standards. Rather than judging a piece of student writing by an objective measure of coherence and correctness, teachers are supposed to evaluate how much the student has grown over the course of a semester. The hottest trend in grading—portfolio assessment—grows out of the process school. Elbow created the method after he saw the "harmful effects of writing proficiency exams."

Among the most harmful of those effects is apparently the assault on self-esteem that results from a poor grade. In portfolio assessment, students' evaluations are based on drafts of papers, diary entries, letters, and other informal assignments compiled over the course of a semester, rather than on the

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freestanding merit of a paper or exam. Often the student "collaborates" with the teacher in assigning a grade to the portfolio. Portfolio assessment allows for the radical reduction of standards, imports greater subjectivity into grading, and is extremely time-consuming.

For the process school, politics determines pedagogy. Elbow added an additional week of free writing to the start of his courses at Evergreen State College when he saw how useful the practice was in "building community" in the classroom. Elbow rails against grading because it interferes with his ability to connect meaningfully with his students. "Good writing teachers like student writing," he explains, and "it's hard to like something if we know we have to give it a D."

In keeping with the anti-authoritarian commitment of process practitioners, students in a process classroom teach each other. Students form small groups to read aloud and comment on each other's writing, while the teacher surveys the scene benignly. The students may be admonished to say two good, as well as two critical, things about each other's essays—a task that would tax the invention of Shakespeare. Many of the groups I have observed quickly turned their attention to more compelling matters, like last weekend's parties or the newest sneakers. And no wonder, given the abysmal prose they are supposed to discuss. The following two paragraphs are from a student's answer on CUNY's writing-proficiency exam. The question was: "Do you think the personal life of a political candidate ... should be considered a factor in determining his or her ability to do the job?"

> We are living in a world that's getting worse everyday. And what we are doing nothing, just complaining about the other person life. We should stop because if we don't stop by looking on every candidate lifestyle and focus more on how, we could make it better. We all gonna die of, hungry, because we wouldn't have nothing to eat and no place to life.
>
> People tends to make mistake in life. We all are humans. That's why we should never judge a person for the cover of a book. People change in life, most of them tends to learn from their mistake. We live in a world that we should learn to forgive and forget everyone mistake and move forward.

While peer teaching may have value for more experienced

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student-writers, for the incompetent—which includes not just remedial students but increasing numbers of all incoming students—it is an egregious case of the blind leading the blind. It ignores the reason students are in remedial classes in the first place and violates the time-honored principle that one learns to write by reading good, not awful, writing.

The process school's determination to break down hierarchy extends beyond the teacher-student divide. A pioneering freshman composition course at City College combines students who failed the CUNY writing entrance exam with those who passed. Says Acting Provost Mike Aarons: "The idea behind the program [which is being replicated in other areas of the college] is that the more successful students help the less successful."

Aarons might have added that another idea behind such programs is radical egalitarianism. Individual effort must go to raising the collectivity, not to raising oneself above the collectivity; individual success betrays the good of the whole. The course received a grant from the Fund for the Improvement of Post-Secondary Education—apparently the federal government likes the idea of fighting elitism as well.

In a process classroom, content eclipses form. The college essay and an 18-year-old's personality become one and the same. Effie Cochran, an English as a second language professor at Baruch College, gushes: "Here I am—teacher-confessor. All these [gay] people are coming out to me through autobiographical reports who wouldn't come out to a priest." One process professor recommends that the profession "pay more attention to the experience of psychotherapists regarding role-modeling, sexual tension, and transference."

Students who have been told in their writing class to let their deepest selves loose on the page and not worry about syntax, logic, or form have trouble adjusting to their other classes. A student at St. Anselm's College complained to her writing teacher that her humanities professor had prevented her from developing her ideas on Homer, Cicero, and the Hebrew prophets. His sin? He had insisted on numerous references to the text and correct English prose. "In humanities," she whined, "I have to remember a certain format and I have to back up every general statement with specific ex-

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amples. Oh, and that word, 'I,' I just used. You would never see that word in one of my Humanities papers." In process-school jargon, the poor humanities student has been denied "access to a personal language."

With its emphasis on personal experience and expression, the process school forgets that the ultimate task of college writing is to teach students how to think. In the personal essay, assertions need not be backed up by anything more than the author's sincerity. According to Rolf Norgaard of the University of Colorado, evaluation then becomes a judgment upon students' lives, their personalities, their souls. But how can you tell a student, he asks, that her experiences or family life were not terribly original or striking?

The process school of writing has spread well beyond college campuses. Washington Irving Elementary School in Chicago introduced process methods six years ago in the hope of improving students' catastrophic performance in reading and writing. Teachers tossed out their red pencils and workbooks; from then on, students would simply write, unfettered by such enthusiasm-crushing methods as rote learning. Students worked in groups, grades were out, cooperation was in.

The initial response, euphoria, was short-lived. Student groups rarely completed their assignments. They made little progress in mechanics. Some teachers started giving grades and teaching the basics again. But when they handed out incompletes and tried to hold students to higher standards, they caught heat from both parents and the principal, who told them that their expectations were too high. Lesson: Once out of the bottle, the process genie is hard to get back in.

Derrida's writing lessons

In the early 1980s, a few process teachers started to sense that something was deeply wrong. While they had been unleashing an orgy of self-expression in their classes, across the hall in the literature department, the hippest teachers were preaching that the self was a fiction, a mere product of language. The process theorists, in other words, stumbled across deconstruction. In the 1970s and 1980s, this was not difficult to do, since just about every field in the humanities during that period scrambled to parrot the impenetrable prose of

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Jacques Derrida, Paul de Man, and Michel Foucault.

What an embarrassment for the poor process teachers! Deconstructionism declared the self dead, and they had been assiduously cultivating it. And what to do about their favorite genre, the personal essay, which seems to presuppose a writing subject, a concept anathema to the deconstructionists?

The solution to this dilemma demonstrates the resourcefulness of college professors today. While some process advocates, such as Elbow, have continued their former ways unchanged, many others have simply grafted deconstructive rhetoric onto a process methodology. The result is pedagogical chaos. Students are still writing personal essays, but they are deconstructing them at the same time. Such writing assignments are designed with one sole purpose: to make the professor feel that he is at the cutting-edge. They have nothing to do with teaching writing.

Witness the rhetorical sleight of hand of Joel Haefner, a professor at Illinois State University. Haefner manages to demonstrate disdain for process pedagogy, while nevertheless preserving it. "Calls to revive the personal essay," he writes in *College English*,

> carry a hidden agenda and rest on the shibboleth of individualism, and concomitantly, the ideology of American democracy.... As we interrogate our assumption about the essay genre and its role in a "democratic" and "individualistic" pedagogy, we will find, I think, that it makes more sense to see the essay as a cultural product, as a special kind of collective discourse. Hence there is still a place for the "personal" essay in a collaborative pedagogy.

This tortured reasoning may preserve Haefner's credibility with the post-structuralists, but its practical result must tie students up in knots. Here are some of Haefner's deconstructive writing projects that are intended to "critique the fiction of a singular author": writing groups create a personal essay that purports to be the work of a single author; individual students write a personal essay using "we"; teams rewrite a personal essay from other singular viewpoints; and (this is my favorite) students are encouraged not to create a unified and coherent first-person-singular voice but, rather, a mix of "I" speakers.

This borders on pedagogical malpractice. Here are students

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who are unable to write a coherent paragraph, and they are being encouraged to cultivate an incoherent writing voice.

Multicultural writing

But academia can be cruel. No sooner did writing teachers master deconstructive jargon than a new, improved version came along. After years on the top of the charts, deconstructionism has been pushed aside by multiculturalism. Multiculturalism is both the direct offspring of deconstructionism and its nemesis. The current obsession with racial, sexual, and ethnic difference grew directly out of deconstructionism's obsession with so-called linguistic difference. But, whereas deconstructionism was a mandarin pursuit that had only contempt for political engagement, multiculturalism asserts the centrality of politics to every human endeavor.

For would-be composition theorists, the most important consequence of multiculturalism has been the reemergence of the self as the central focus of concern. But the new multicultural self is defined exclusively by racial, sexual, and ethnic identity. The multicultural writing classroom is a workshop on racial and sexual oppression. Rather than studying possessive pronouns, students are learning how language silences women and blacks.

As *New York Times* reporter Richard Bernstein described in his recent book, *Dictatorship of Virtue*, the University of Texas at Austin exploded in controversy in 1990 over a proposed writing course called "Writing about Difference." The course text was *Racism and Sexism: An Integrated Study*, by Paula Rothenberg, a national leader in the movement to inject race and gender into every aspect of the curriculum. "One assumption of this book," writes Rothenberg, "is that racism and sexism pervade American culture, that they are learned at an early age and reinforced throughout life by a variety of institutions and experiences that are part of growing up and living in the United States." Students in the new writing course would use the text's readings to explore their own role as oppressors or victims.

In a rare victory for common sense, the course was canceled after a bitter fight. Most colleges have not been so

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lucky, however. Students in Muhlenberg College's Third World Experience composition course, for example, study works by third-world authors to learn how colonialism and gender each have their unique system of oppression. According to two critics of the course at Muhlenberg, it primarily requires that students "wade through the material, applaud, and announce its authenticity."

Effie Cochran of Baruch College assigns her remedial-writing students role-playing exercises so that women can vent their anger at the discrimination they suffer in and out of school. Whether these performances improve students' writing skills is anyone's guess.

The personal essay remains a cornerstone for the multicultural classroom; it is a special favorite of feminists. But it has been supplemented by "ethnography." David Bleich's students at the University of Rochester conduct personal ethnographies on social relations in the classroom, observing how their gender, race, and class allegedly determine their response to literary works. The most frequently assigned topic for student ethnographies, however, is popular culture—in other words, describe and respond to your favorite rock video.

Every writing theory of the past 30 years has come up with reasons why it's not necessary to teach grammar and style. For the multiculturalists, the main reason is that grammatical errors signify that the author is politically engaged. According to Min-Zhan Lu of Drake University, the "individual consciousness is necessarily heterogeneous, contradictory, and in process. The writer writes at the site of conflict."

It is the goal of current writing theory to accentuate that conflict. Today's theorists berate former City College professor Mina Shaughnessy, whose book, *Errors and Expectations*, heralded the remedial-writing movement, for trying to introduce her students—however gently—to academic prose. Min-Zhan Lu writes: "We need to contest teaching methods which offer to 'cure' all signs of conflict and struggle which the dominant conservative ideology of the 1990s seeks to contain."

There is a basic law at work in current composition theory: As students' writing gets worse, the critical vocabulary used to assess it grows ever more pompous. James Zebrowski of Syracuse University claims that doing ethnographies makes stu-

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dents "constructors of knowledge." John Trimbur of Worcester Polytechnic Institute describes what he calls "post-process, post-cognitivist theory": It "represents literacy as an ideological arena and composing as a cultural activity by which writers position and reposition themselves in relation to their own and others' subjectivities, discourses, practices, and institutions." According to Trimbur, "literacy crises result not from declining skills but from the contention of various interested representations of literacy." In other words, students who can't read and write are simply offering up another version of literacy, which the oppressive conservative ideology refuses to recognize. Such double-talk harks back to the 1960s, when open-admissions students were described as coming from a culture where "orality" was dominant.

Wanted: writers

The bottom line to all this nonsense is drastically lowered expectations of student skills. Marilyn Sternglass, a composition theorist at City College, argues that students should be able to pick up the topics for CUNY's writing-proficiency exam before the exam is administered because "responding to the questions cold makes too many demands on students. If they concentrate on content, their mechanics will suffer; if they concentrate on mechanics, they lose their train of thought." It never occurs to her that such a zero-sum tradeoff indicates precisely what the test is supposed to measure: the inability to write.

Professors are expending vast amounts of energy making excuses for their students. At a 1994 composition conference at the CUNY Graduate Center, Geraldine de Luca, director of freshman English at Brooklyn College, railed against grammatical rules. Though teaching rules in response to individual students' questions, she said, can be "empowering, the rules have a way of taking over. And some teachers think that's fine: 'It's about time they learned grammar,' they say. 'I knew this stuff when I was in the fifth grade.' But in what time, in what community, in what country?" asked de Luca melodramatically. "Even the concept of error," she concluded, "is beginning to feel repugnant to me."

Today, at CUNY and elsewhere, there is a growing move-

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ment to abolish the distinction between remedial writing and reading courses and regular freshmen courses, on the grounds that placing students in remedial courses injures their self-esteem. Remedial-writing courses at Baruch College and elsewhere are now known as "English as a Second Dialect," or ESD, courses. Proudly displaying their knowledge of Foucault, composition theorists argue that the category "remedial education" is merely an artificial construct imposed by the ruling class on the oppressed. Marilyn Sternglass of City College quickly corrected me when I asked about students who needed remedial work: "They are 'judged' to need remedial classes," she retorted haughtily.

Professors who exempt students from the very standards that governed them when they were in school feel compassionate, noble, and powerful. But the professors' power is limited to their world. Though they may be willing to overlook spelling, punctuation, and grammatical errors in favor of a "holistic" approach to student writing, employers are clearly not as generous, as the census survey suggests.

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Levin, Jeffries, and the fate of academic autonomy

NATHAN GLAZER

PROFESSORS Michael Levin and Leonard Jeffries of the City College of New York have both been in the news—Professor Jeffries is still in the news—for things they have written and said, and for which, they have charged, they have been punished by the college. Both, in the end, appealed to the federal courts for redress on the grounds that their freedom of speech had been infringed. Professor Levin offended blacks with his public letters and articles. Professor Jeffries offended Jews with his speeches. Both found satisfaction in the decisions of the federal district court to which they appealed: The court ruled that they had been improperly punished for their speech. Professor Jeffries' case then ran a different legal course, and may still be subject to further legal developments, but these do not affect the central thrust of this article, which is to ask: Are federal courts and the application of free-speech standards the way to deal with

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these difficult issues for higher education? I believe they are not, and this article, describing the Levin and Jeffries cases, explains why.

There will undoubtedly be more cases of the same kind. Colleges and universities have been trying to deal with the issue of what is now called "hate speech." Generally when we use that term, and argue over the rules that are being written in various colleges and universities to control or punish obnoxious speech, we have in mind students and student behavior. Some of these cases—such as that of Eden Jacobowitz at the University of Pennsylvania, who called a group of black female students talking under his window "water buffalo," and whom the college authorities tried to discipline—have received national attention.

The Levin and Jeffries cases raise a different but related issue. Here what is at issue is the writing and speeches and teaching of faculty members with tenure, not epithets uttered in the heat of the moment. Faculty members are, of course, capable of expressing wounding epithets, in the heat of the moment or otherwise, just as students are capable of reasoned speech. The issue raised by Levin and Jeffries at City College is that of reasoned speech and writing by faculty members that have been found offensive and outrageous by one or another group. Of course, the line between the reasoned (even if not fully reasoned) positions of faculty members and epithets is not easy to draw: One fear about speech codes is that they will inhibit reasoned speech. What one person may consider reasonable argument (what was the scale of the Holocaust, are blacks intellectually inferior), another will consider outrageous, a harmful expression of hate, damaging to students of the affected group.

Clearly, we are only at the beginning of the emergence and development of some complex issues. We are trying to deal with these issues by calling upon Constitutional standards governing free speech, either by writing—or not writing—speech codes or by resorting to federal courts when faculty members are disciplined or punished for something said or written. But how appropriate are free-speech standards in responding to the problem created when faculty members take positions in writing, speech, and teaching that one or another group finds outrageous and damaging?

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Levin and Jeffries: the similarities

Both Professors Michael Levin and Leonard Jeffries are tenured members of the City College of New York (CCNY), a component unit of the City University of New York (CUNY).[1] Both wrote or said things that persons in the college and outside, including faculty, students, administrators, and elements of the general public, believed were reprehensible, outrageous, offensive, false. In both instances, the college took some action against them. In both instances, the subjects of these actions resorted to the federal courts, arguing that they had been damaged by this action and, since it was action taken by a state agency (the college is public) in response to their speech, that their right to free speech had been violated. In both instances, a federal judge (the same judge, it turned out, Kenneth Conboy, now retired) agreed that they had been penalized for their exercise of free speech, and directed the college to restore them to their previous positions. (The *Levin* proceedings were before the judge alone, the *Jeffries* proceedings before judge and jury, and, in the latter case, the jury also awarded substantial financial compensation, reduced by the judge.) In both instances, one may see the outcome as a positive example of the proper protection of individual rights by the Constitution and a triumph of American Constitutional law.

Thus, it is possible, if one closes one's eyes to a great deal, to see the two cases as equivalent. This I believe was the position of the president of the college at the time of the two cases, Bernard Harleston, who saw himself as defending the same important values in both cases, and who took the position that the college was threatened in a very similar way by the actions of the two faculty members. As the losing defendant in both cases, he, of course, defended the actions the college took in response to the protests of students and outside elements attacking the views and actions of Professors Levin and Jeffries. Defenders of the appropriateness of resorting to free-speech doctrine in bringing the two cases to a

[1] The facts about the two cases are to be found in the Opinion and Order of Judge Kenneth Conboy in the two cases, both of which have been reported: *Levin v. Harleston*, 770 F. Supp. 895 (S.D.N.Y. 1991), and *Jeffries v. Harleston*, 828 F. Supp. 1066 (S.D.N.Y. 1993).

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satisfactory resolution would also see the two cases as equivalent. In both cases, objectionable things were said and written, the college took some action, and the Constitutional law protecting freedom of speech was appealed to in order to defend a major principle.

Those who see the two cases as equivalent emphasize two basic values, the maintenance of harmony among the various ethnic and racial and religious groups that make up our diverse society, and the particularly diverse City College of New York, as well as academic values placing truth and the search for truth above all others. The defenders of the outcomes in the *Levin* and *Jeffries* cases generally see no conflict between these two values. They attack the views of both Levin and Jeffries as false and hateful, as well as disruptive of intergroup harmony. What their posture would be if they recognized that sometimes true assertions can undermine intergroup harmony is not easy to divine. They are content to believe that the two plaintiffs were in the same position in regard to truth as well as Constitutional law: wrong about truth, but equally entitled to propagate their falsehoods.

It was clearly the president's view that there was no contradiction between the two objectives of upholding truth and fostering intergroup harmony: The truth would serve to promote harmony among ethnic groups, and even if there was no way to expunge fully what were to him the obnoxious falsehoods propounded by the two professors who were undermining harmony, at least it could be made clear to those outraged by them that the administration would in some way show its displeasure with the two faculty members in question.

To present the two cases as parallel, as President Harleston has, shows the evenhandedness and fair-mindedness of the administrator. Racism, whether that of a white philosopher justifying the differential treatment of blacks, or a black scholar condemning Jews for mistreatment of blacks, would be found equally reprehensible, and some action to demonstrate the administrator's sympathy with those outraged by these views would be taken.

An insistence on the equivalence of the two cases would also provide a rhetorical stick to beat those who have expressed their outrage that Professor Jeffries still maintains his position as professor and chairman of Black Studies while

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remaining silent on Professor Levin. When the two cases are considered equivalent, the words of both professors equally obnoxious, one can argue that criticism of one should be stayed, unless it is made equally of both. Thus, consider the letter of Reginald Wilson, senior scholar with the American Council of Education, in the *Chronicle of Higher Education*:

> I find Mary Lefkowitz's outrage at the academy not meting out swift justice to Anthony C. Martin [a professor at Wellesley College who argues, as Jeffries does, that Jews bear some special culpability for slavery] and Leonard Jeffries, Jr., a little naive ("Combatting False Theories in the Classroom," January 19)....
>
> Just prior to the Leonard Jeffries incident, there was the case of Michael Levin, who teaches that blacks are genetically inferior to whites, which is conspicuously absent from Ms. Lefkowitz's complaints. In that case, the judge ruled not only that Mr. Levin was protected by academic freedom, but that the university could not offer an alternative section for students who might have been offended by his "false theories." But, then, I suppose that what Mr. Levin teaches is all right, it's just upsetting when someone teaches falsehoods about my group.
>
> Let me say that I find Mr. Martin's and Mr. Jeffries's views repugnant and, moreover, not substantiated by scientific evidence. But I will not pursue them with the zeal Ms. Lefkowitz demands while academics rise in the defense of Mr. Levin, Arthur Jensen, Philippe Rushton, William Shockley, and the legions of academics who insist that these professors who propound erroneous racial theories are merely pursuing "disinterested research."[2]

However, despite the similarities between the two cases, there are also profound differences between them, and the differences raise a number of crucial issues for the college and university. To consider them only as cases of the penalization of free speech, which is the only way they could be considered in a federal court, was to minimize or ignore the differences between them. These differences should have been primary in an academic institution. They could not even be raised in the forum of the federal courtroom. This might, from one point of view, be considered a virtue. From the point of view of the college and university and its values, it is rather a serious limitation.

In an academic institution, truth must be a primary value. In making free speech the central issue in these cases, truth

[2] *Chronicle of Higher Education* (March 2, 1994), B3.

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became irrelevant. Free-speech Constitutional law has evolved and been elaborated to a degree that is often surprising to many of us—regulations on what sort of clothing one may wear to school, for example, have become "free-speech" cases. Obviously, in view of the development and present posture of free-speech law, it was perfectly appropriate for a federal court to have accepted as legitimate both complaints. I will explore what to me seem to be the great differences between the cases and ask what the alternative was to a judicial settlement of the matter under Constitutional law.

The facts in the *Levin* case

The facts in the two cases are well presented in Judge Kenneth Conboy's Opinion and Order for each. In his Opinion and Order in *Levin*, he writes:

> A professor who has had tenure for over sixteen years at one of America's most famous institutions of higher learning, singularly noted for its bracing environment of broad and untrammeled speech [footnote omitted], claims that his tenure is in jeopardy, his students drawn away, his classes disrupted, his reputation injured and his speech chilled as a result of the actions of his college's administrators, who are said to be repelled by his views on affirmative action quotas and the relative intelligence of blacks and whites, and who are said to be, by their actions, seeking to suppress his views.
>
> The college officials say that his views are odious, and rightly denounced, and that although he has committed no act of academic misconduct or discrimination against his students, and although there is no complaint by any of his students against him, they are permitted to structure the class schedule to provide alternative professors to "insulate" and "protect" his present and future students from his views.

Michael Levin's troubles arose from a letter he wrote to the *New York Times* (January 11, 1987), a book review he published in the Australian journal *Quadrant* (January/February 1988), and a letter he published in the *Proceedings and Addresses of the American Philosophical Association* (January 1990). The *New York Times* letter responded to an editorial that had appeared in the newspaper (December 28, 1986) on the issue of whether young black men may be treated differently because they are statistically more likely to commit crimi-

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nal acts—for example, should storekeepers deny admittance to persons whom they consider, simply because of their race, to be a possible threat? The issue was raised by the assault on some black men who were in a white neighborhood in New York City. The many, the *Times* argued, should not be penalized for the sins of the few. The *Times* referred to the philosopher John Rawls and paraphrased his position as follows: "No one ought to endorse a social order he could not accept if he were not in the shoes of the disadvantaged." Levin's letter argued against this use of the Rawls principle. His language was direct and unmodulated:

> Rawls proposes this principle as a test of the basic institutions of a society, if they were being chosen from a position of total ignorance about one's actual place in that society. It does not constrain particular decisions made within a given society ... when specific information is available about the actual risks one faces....
>
> If information about appearance can be used to reduce the probability of being attacked, one may use it. Even other blacks are presumably more wary of 17-year-old black males wearing running shoes and hooded sweatshirts than they are of other members of the population.

He then goes on to criticize the *Times* for supporting affirmative action, which he asserts penalizes whites innocent of discrimination. "Is discriminating against innocent whites a tolerable price for insuring jobs for blacks while discriminatory inconvenience for innocent blacks is too high a price for reducing the risk of murder for white store owners?"

A year later, Michael Levin reviewed, in the January/February 1988 *Quadrant*, E.D. Hirsch's *Cultural Literacy* and Allan Bloom's *The Closing of the American Mind.* Here he refers to the well-known discrepancy between white and black academic performance, and writes:

> [T]he only adjustments in educational measures that will allow blacks their due number of successes amount to making coursework easier and easier, and this is what has been going on for over thirty years. Conversely, if standards are going to be raised, cultural literacy reasserted, and college education given its old depth and focus, the American polity will have to reconcile itself to an embarrassing failure rate for blacks.

The letter to the *Proceedings and Addresses of the Ameri-*

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can Philosophical Association in January 1990 argued that the reason for the low representation of blacks in the field of philosophy was their lower level of intelligence on average.

The college's reaction to Levin

Shortly after he published his letter in the *Times*, Michael Levin's troubles began. Pamphlets were distributed outside his class, a demonstration outside his classroom blocked students from entering, and other demonstrations followed. Levin reported all this to campus security, the administration, even President Harleston. While no action was taken against the student demonstrators, a security guard was assigned to Professor Levin's classes.

After his review in *Quadrant* appeared, Michael Levin was condemned by the Faculty Senate of City College for expressing "racist prejudices [offensive to] our fundamental notions of human decency." President Harleston commended the action of the faculty senate and suggested it appoint a special committee "to receive, investigate and make recommendations concerning any charges of bias related activities by faculty directed to or in interaction with students." The senate took no action on this.

City College has a required course for undergraduates in philosophy, which Michael Levin, among others, teaches. In the spring of 1990, shortly after his letter in the *Proceedings and Addresses of the American Philosophical Association* appeared, Levin was scheduled to teach this course, and, without his knowledge, a section of this course, meeting at the same time as his, was created. The action was taken by a dean, against the opposition of the chairman of the philosophy department, and the dean sent a letter to Professor Levin's students informing them of this alternative and its availability, explaining that this action was taken because "Professor Levin has expressed controversial views."

In April 1990, President Harleston, having been rebuffed a second time in a request to the college faculty senate that it appoint a committee to look into the issue of bias or racism at the college, and specifically the writings of Professor Levin, announced that he would form an ad hoc committee to consider whether Professor Levin's views affected his teaching

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ability. In a campus newspaper report, President Harleston was quoted as saying "The process of removing a tenured professor is a complicated one." The formal charge to the committee was "to review the question of when speech both in and outside the classroom may go beyond the protection of academic freedom or become conduct unbecoming a member of the faculty, or some other form of misconduct." The committee was asked specifically to review information concerning Michael Levin. This action was later deplored in a resolution by the faculty senate.

The committee report, dated February 5, 1991, asserted that there was a tension between the principles of academic freedom and free speech, and the college's obligation to

> uphold students' rights to a supportive learning environment. It finds that there are utterances by faculty, even outside of class, that can have a detrimental impact on the educational process. In particular, statements denigrating the intellectual capability of groups by virtue of race, ethnicity or gender have the clear potential to undermine the learning environment and to place students in academic jeopardy.

This was the situation in regard to Professor Levin's students:

> The statements by Professor Levin alleging the intellectual inferiority of blacks does, in our view, clearly have the potential to harm the process of education in his classes. Thus we find that it is appropriate for the College to continue to carefully implement ways to protect the students from such harm.

The committee report supported the establishment of the parallel section to Professor Levin's courses but recommended no disciplinary action.

By the time the report was published, Jeffries, professor and chairman of Black Studies, had also become notorious. The report referred to "statements attributed to Professor Jeffries to the effect that AIDS was created as part of a conspiracy by whites to destroy blacks or that make sweeping negative characterizations of whites." While "many would find [these statements] outrageous and possibly offensive," the committee asserts that they "do not impact directly on the process of education in class." While "they may be deplorable, they should neither lead to disciplinary proceedings ... nor other College administrative responses."

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A key distinction made in the report that I have summarized was between statements made in public forums or in class that have the capacity to affect the learning environment in class, and statements that "have a generally negative effect on campus atmosphere, but that do not impact directly on the process of education in class." Jeffries' and Levin's statements both have a negative effect, yet only Levin's statements apparently affect the process of classroom education. Thus, ways to protect students from harm are appropriate in the case of Levin but not, it appears, in the case of Jeffries. The report does not present any evidence regarding the work of Levin and Jeffries as classroom teachers but takes it as a given, requiring no further argument, that Levin's publicly stated position must affect how minority students will respond to him as a teacher.

At the trial, Levin testified that he believed that his tenure was in danger, that Harleston was going to try to fire him, and that, as a consequence, he turned down many invitations to speak or write about his views. Judge Conboy found that there had been a chilling effect on Levin's exercise of his right to free speech, and, therefore, that the college was permanently enjoined from "commencing or threatening to commence any disciplinary proceedings against ... Levin [and] ... from creating or maintaining 'shadow' or 'parallel' sections of his classes." The college was also enjoined to take "reasonable steps to prevent disruption of Professor Michael Levin's classes."[3] There were further legal proceedings in the case, but, on the key issues, Judge Conboy's injunction was sustained.[4]

The facts in the *Jeffries* case

Leonard Jeffries was chairman of the Black Studies department at City College. He had been chairman since the department was created in 1972, having been nominated by the department faculty for a sixth consecutive term of three years on June 5, 1991. At CUNY, the faculties of each department nominate chairmen through elections, subject to the approval

[3] *Levin*, 770 F. Supp. at 927.
[4] See *Levin v. Harleston*, 986 F. 2nd 85 (2nd Cir. 1992).

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of the president of the college and the board of trustees. The board of trustees missed voting on this normally pro forma action before the end of his previous term as chairman on June 30, but the president of the college sent him a congratulatory letter on his reappointment on July 1.

On July 20, Jeffries gave a speech in Albany, New York, at the Empire State Black Arts Festival, on multicultural education. Jeffries had previously served as a consultant to a New York State task force on multicultural education and was chief author of its report. The report, which advocated a complete reformation of New York State education to reverse what it called the "intellectual and educational oppression [of minorities] that has characterized the culture and institutions of the United States and the European American world for centuries," was severely criticized for its intemperateness and its proposals by leading historians and by the media. The controversy led to the appointment of another committee, whose own report had just appeared, again to a storm of criticism. So multiculturalism and its implications for education were high on the public agenda in New York State in the summer of 1991.

In his speech on multicultural education, Jeffries characterized his critics as Jews hostile to blacks, attacking Jews generally for their role in the slave trade and in Hollywood, where he asserted they were responsible for a demeaning representation of blacks. A storm of criticism by major media organs and by leading public officials followed. Editorialists and political officials demanded to know why Jeffries (who had been in the news earlier because of his outlandish theories, as propagated in his classes) was still a tenured professor at City College and still chairman of the Black Studies program.

There were a variety of responses to this uproar by the college administration and the Board of Trustees of CUNY. The college administration, which had had a good deal of experience with Jeffries, and the CUNY Chancellor basically wanted to find the minimal response that would still the outcry. In contrast, the board of trustees included a good number of individuals who desired, but lacked the authority, to fire Jeffries. The solution that finally emerged, which scarcely satisfied those who had called for Jeffries' ouster, was to reduce

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his term as chairman from three years to one. The college went on to seek a new chairman, and the board of trustees voted to appoint Professor Edmund Gordon, who had long served at Yale, to take over the chairmanship when Jeffries' abbreviated term ended in June. Jeffries then sued the president of the college, the chancellor of CUNY, and members of the board of trustees who had voted to reduce the length of his chairmanship, on the grounds that he was removed from the department chairmanship in violation of his First Amendment right to free speech. He asked for punitive damages and that his chairmanship be reinstated.

The case was tried before a jury which, responding to questions set by the judge, found that Jeffries' Albany speech was "a substantial or motivating factor" in the reduction of his term as chairman; that he would not have had his term reduced had he not made the speech in Albany; that the defendants had not shown that his speech "hampered the effective and efficient operation of the Black Studies Department." But, in apparent contradiction to this last vote, the jury also found that the defendants "were motivated in their action by a reasonable expectation that the plaintiff's July 20, 1991 speech would cause the disruption of the effective and efficient operation of the Black Studies Department, the College, or the University." The jury also agreed that Jeffries had been "deprived ... of property rights without due process of law." The jury awarded him $400,000 in punitive damages, assessed against the defendants. The judge accepted the jury's verdicts, but reduced the punitive damages.

Jeffries was reinstated as chairman so that he could serve the two years remaining on his appointment. On appeal, the Second Circuit upheld his reinstatement but found in the contradictory determinations of the jury a basis to vacate the award of punitive damages. On appeal to the Supreme Court, the Court remanded the case and asked the Second Circuit to review it in the light of a recent case, *Waters v. Churchill*, where a nurse had been dismissed from a public hospital for making critical remarks. The Court in that case made a distinction between the government as "sovereign" (in which capacity it must give greater deference to free speech), and the government as "employer" (in which case it can penalize an

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employee for speech if it expects that speech to be disruptive). On the basis of this remand, the Second Circuit has now ruled in favor of City College, and Jeffries is back to square one.

The judge decides

Judge Conboy, in his Opinion and Order, indicated what he thought the defendants—college president, university chancellor, and members of the board of trustees—would have had to do to defend themselves against the charge of violating Jeffries' freedom of speech. They would have had to show that "either the consequences of the speech disrupted the campus, classes, administration, fund-raising or faculty relations, or that the professor had turned his classroom into a forum for bizarre, shallow, racist and incompetent pseudo-thinking and pseudo-teaching."

The judge's language, here and elsewhere in his Opinion and Order, suggests strongly that he believed that the defendants could have made such an effective defense but did not. His Opinion and Order is peppered with such terms as "amazingly" and "astonishingly" to describe the fact that the administration did not create the "paper trail" that would have justified action against Jeffries.

The defense did show that Jeffries had long been a subject of administrative concern:

> As far back as November of 1984, Professor Jeffries made anti-Semitic and racist remarks to a candidate interviewing for the position of director of the College's International Studies Program. As a result of the remarks, the candidate withdrew.... In the face of what seems to be totally unacceptable behavior for a Department Chair, the CUNY administrators allowed Professor Jeffries to retain his Chairmanship, only sending him a letter of reprimand.

There is a case of a student dropping Jeffries' course and asking for a refund because, to quote him, Jeffries "spouted the most racist line of nonsense." His classes were reviewed by a student for a campus newspaper, and the absurd content of these classes could have been taken notice of by the administration. There was evidence that the defendants were looking for a new chairman even before his infamous speech.

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Yet, the judge ruled that "there is insufficient evidence that there was a purposeful and structured search or a sense of urgency about the matter."

The defense's introduction of Jeffries' past derelictions and more recent bizarre and disruptive acts seems to have worked against it. In the judge's opinion:

> The defendants' position is undermined by their own presentation at trial of broad evidence of impropriety and extremely questionable behavior on the part of Professor Jeffries well before the speech.... This evidence suggests, and certainly the jury could have found, that the ... incidents cited by defendants [after his term as chairman was reduced] were ... characteristic of Professor Jeffries' conduct throughout his tenure at the College.

The judge's reasoning seems to be that if outrageous behavior in the past did not lead the college to take action against Jeffries, then it must not have been his outrageous behavior but only his Constitutionally protected speech which led to the reduction of his chairmanship. The college tried to put the speech in the context of many actions, of which the speech was simply the last straw; to the judge, the college was "cowardly" in not responding to Jeffries in the past, and it was only the uproar that led to the reduction of his chairmanship.

It would have appeared, on the face of it, a very simple task to demonstrate that Jeffries had hurt the college. The college's alumni and major contributors are in large measure Jewish. The college was aware of how angry alumni were at Jeffries and at the college for maintaining him in his position. In fact, they sent letters to alumni trying to mollify them. Certainly Jeffries' activities must have affected fund-raising, as President Harleston himself testified. But, to Judge Conboy, this was not sufficient: "[D]efendants made no attempt to provide data or an analysis of alumni giving after the speech. Nor did the defendants present any correspondence from alumni or put on the stand a single alumnus."

It is clear from his two opinions where Judge Conboy's sympathies lie: They are with Levin, who has been unfairly penalized for his speech, and against Jeffries, concerning whom the administration, had it not been cowardly and incompetent, could have made a good case for some sanction. According to the judge, the administration could even have acted against

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him, despite his protected speech, if he "had turned his classroom into a forum for bizarre, shallow, racist and incompetent pseudo-thinking and pseudo-teaching."

But the fact that they never acted against Jeffries, and only did so after the public uproar, was decisive: He was being punished for speech on a matter of public interest. Thus, the two defendants were formally in the same relation to the college and deserved the same relief. We come back to the issue, then, that before the law and its defense of free speech, there is no difference between Levin and Jeffries. My argument is that there are vast differences between the two cases, differences that are irrelevant to the law but should be of the essence to an academic institution and the values of higher education. Because these values could not be considered under the rubric of the Constitutional protection of free speech, I see a radical discordance between the way the cases should have been handled under academic criteria, the way they were actually handled by the administration of the college, and the way they were finally determined in federal court.

The differences that should have mattered

The key difference was that Levin was engaged in legitimate academic activities, which are generally summed up under the three headings of research, teaching, and public service. Jeffries conducted no research—at any rate, he published no research. His teaching was outrageous, and it was only his public service that deserved protection. Research and teaching are considered essential duties of a college professor. Public service, which can take a number of forms, including nonprofessional writing, public speeches, and service on public bodies, is considered, when exercised on the basis of one's professional qualification in a specialized discipline, a legitimate activity of academics. It may be included when they are professionally evaluated, though it is not central to their evaluation. Comment on public affairs may also be considered simply a part of one's role as a citizen, entirely independent of faculty obligations, duties, or restraints.

Despite the legitimacy of Levin's activities, as an academic or as a citizen, he ran afoul of the administration. As he charged in his suit, his classes were disrupted, and the college

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did little to restrain the disrupters or punish them; the college set up a section of the required course he taught to parallel his own, and informed students that, if they believed they would be uncomfortable in his section, they could transfer to the new one; finally, the college set up a committee to examine his behavior, that is, his research and writing, to determine if any action against him was appropriate, and he believed that this action might include the termination of his tenure.

In regard to Levin, the duty of the college administrator was simply to take no notice of his activities, aside from the necessary one of preventing his classes from being disrupted and enabling him to continue his work as teacher and researcher. It would have been perfectly legitimate to point out to disrupters and protesters that the college protects the freedom of inquiry and discussion of faculty and students, as well as the right to contest the positions taken by researchers and advocates within reasonable limits. Yet, as Levin argued in his suit, and the court confirmed, the college joined in his harassment.

In the case of Jeffries, what he was doing as a teacher and scholar was beyond the pale of what was acceptable in a college. His teaching was the purveying of nonsense, based on no scholarship at all or on scholarship violently wrenched out of context to serve his demagoguery. His research was nonexistent. There is no record that he has published anything in his 20 years as professor and chairman (though before that he did complete a doctoral dissertation at Columbia University). His public service reflected the quality of his research and teaching.

Clearly, the college should have at some point taken notice of his performance. While I would go so far as to say he no longer deserved the protection of tenure, as little as a geographer who insists that the earth is flat, or a historian who asserts that human history began with the creation of the earth in the year 4004 B.C., I would understand why the college, or any institution that grants tenure, would have hesitated to withdraw this protection. Prudential grounds rather than grounds of principle would have made it unwise. The costs of dismissing a professor with tenure are so great that it

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is simply not worth it. These costs in this case would not only have been monetary, involving something in the order of an extended trial with appeals and the like, but would certainly have included considerable disruption, for Jeffries had organized a core of fervent supporters among students.

Despite the fact that he had no standing as a scholar, whether in his field or outside it, and had written or published nothing in his more than two decades at City College, despite the publicity that his outlandish views received, despite the fact that he brought the department he had chaired for two decades into disrepute, the college tolerated his presence as chairman of Black Studies.

In the *Levin* case, the college acted not to defend Professor Levin but to examine his suitability. In the *Jeffries* case, it reduced the term of Professor Jeffries' chairmanship only after huge public protest. The question I have raised from the beginning, as to the equivalence of the two cases, can now be sharpened. In brief, from the point of view of the prime objectives of a college or university, Levin was engaged in a legitimate exercise of scholarship, despite the pain it caused and the strains it introduced into relationships between the races. Jeffries aroused the same pain and strain, mostly by raising the specter of an irrational hatred of Jews. From the point of view of an institution of higher education, they stood in very different positions, and the differences between them should have led to differences in how they were treated. When they both end up in the same court, treated under the same law, both declared equally worthy of the protection of the First Amendment, I think something has gone wrong. It is, of course, true that both the scholar and the charlatan are deserving of equal treatment under the law. But they are not deserving of equal treatment by an institution of higher education.

The search for truth

What is at issue here is the difference in how the law must treat freedom of speech and how the academy must treat freedom of speech. From the point of view of Constitutional law, what was said in a case of freedom of speech is of no consequence. There was no reason to examine the truth, by

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whatever means available, of what Levin had written or what Jeffries had said. "Under our system, there is 'no such thing as a false idea,'" according to the Supreme Court.[5] The issue in a federal court examining a claim brought under the Constitutional protection of free speech is not what was written or said but what was done by some authority on the basis of what was said. From the point of view of a college or university, what was written and said, and its relation to the primary function of a college or university—viz., the search for and the teaching of truth, as best we can determine it—should be of the essence. This essence is, however, a matter of indifference to the court applying the Constitutional law of freedom of speech.

One who is convinced of the substantial difference between the two cases when judged by academic criteria is likely to conclude, seeing that these criteria played no role at all in the legal arguments and decisions in the two cases, that something must be wrong, either with the law to which they appealed, or the judge who tried their cases, or the forum in which the cases were tried. Considering the law in its own terms, one cannot argue very effectively that the law or the judge were defective. Both decisions were upheld, in their crucial parts, by the Second Circuit, so it is not possible to fault the law or the judge. (The law may change on the basis of the recent Supreme Court action, referred to above, and the Second Circuit decision. Now fear of disruption may be sufficient to penalize a public employee for speech, but that can hardly give any satisfaction to a defender of academic values. What Levin wrote produced far more disruption on campus than what Jeffries said. Using the logic of the *Waters* case, the College had more grounds for punishing Levin than Jeffries.)

My argument is that the forum was wrong: These cases belong in the academy, to be settled by academic institutions and the formal and informal bodies within and outside these institutions that are expected to maintain the integrity of academic life. These were not matters for federal courts, judges,

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[5] *Gertz v. Robert Welch, Inc.*, 418 US 323, 339 (1974), as cited in Mari J. Matsuda et al., *Words that Wound: Critical Race Theory, Assaultive Speech, and the First Amendment* (Boulder: Westview Press, 1993), 31-2.

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or Constitutional law on the subject of free speech. These were issues internal to the academy, to be determined by considering its own functions and objectives.

Whose ox is gored?

At one time, it was still a subject of serious discussion whether academic regulations of various kinds should be subject to the law governing free speech, as developed by the judiciary. This was the case at the beginning of the free-speech movement in Berkeley in the 1960s, when some of us argued that the university had an independent right to regulate some kinds of student political behavior (e.g., where tables distributing and selling leaflets could be put up). This sort of thing was not to be decided by the law governing what could be done in public spaces or by judges who might know much about Constitutional law but little about the conditions that were desirable for colleges and universities.[6]

At the time, this was considered a conservative position. This is not surprising because, in the mid-1960s, colleges and universities and academic bodies were still considered, for the most part, conservative institutions, and if they ruled on such matters they might be expected to rule in a conservative direction. Courts, it is true, were also more conservative at the time, but they operated under Constitutional law, which was steadily becoming more expansive in its interpretation of what was protected under the First Amendment. In contrast, the regulations of autonomous institutions, which had some supervisory role over young people, were then more restrictive. Those were the days, we should recall, when boys and girls were uniformly separated, and by a substantial distance, in college living quarters, when indeed they were still called "boys" and "girls," implying that they were properly subject to parental discipline and its authorized representatives.

This view, that an independent and autonomous academic institution may properly have rules different from those established for society in general by courts operating under Constitutional law, and that these rules may be more restrictive than

[6] I so argued in *Remembering the Answers: Essays on the American Student Revolt* (New York: Basic Books, 1970), 250-72.

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those general rules, is now considered a liberal, or even radical, position.[7] It is this point of view, after all, that justifies "speech codes" on campus. When Harvard Law professor Randall Kennedy argued in a public forum for the legitimacy of rules in an academic institution more restrictive than the rules that govern what any citizen can do in the public street, he was criticized roundly in an editorial in the *Wall Street Journal*.

The *Journal* wrote:

> At a forum on universities and free speech held at Harvard recently, Professor Randall Kennedy of Harvard Law School challenged the close association between free speech [on the campus] and the First Amendment. According to an account of Professor Kennedy's "argument" in the *Harvard Gazette*, the university's official newspaper:
>
> "'A university must set its own standards because the Supreme Court can rule either way on freedom of expression cases,' he said. 'If the court, for example, ruled that shouting racial epithets was protected under the Constitution, then Harvard should offer less free speech than the surrounding society,' he reasoned."
>
> He reasoned?[8]

The *Journal* had forgotten, or never knew, that this was once sound conservative doctrine.

Of course, we all know the reason why liberals and radicals may want special rules for the campus, such as speech codes, sexual-harassment regulations, and the like. Liberal faculty and administrators, responding to the pressure of minority student leaders and radical feminists, are now the ones who would write and enforce these codes, not the conservative university and college administrations of the past. Administrations these days are hardly and rarely conservative. Administrations were once more conservative than their faculties; they are now commonly more liberal and responsive to demonstrating activist students who have taken up the causes, as they see them, of minorities and women. Indeed, the refuge of any administrator who is not enthusiastic about new and more stringent

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[7] So Matsuda (see footnote 5) and her co-authors are all considered liberal or radical in their argument that hate speech may be regulated by public and campus authorities.

[8] "Restoring Liberal Education," *Wall Street Journal*, 10 May 1993.

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rules to protect the sensitivities of minority-organization militants and feminists, or rules to punish those students and faculty insufficiently respectful of these sensitivities, is Constitutional law. We can't have a code, they will say, or too strict a code, for the courts won't allow it.

The rules that conservatives once defended against the overriding right of free speech were restrictive rules to control nontraditional and radical student behavior and political behavior. The conservatives lost: Free speech on campus came to mean that campus rules could be no more restrictive than those of the public marketplace.

The rules that are likely to be written today will also be restrictive, but they will be written and implemented generally by liberal student bodies and administrators, responsive to the sensitivities of minorities and women. Now it is conservatives who resort to the Constitutional law of free speech to prevent the implementation of these rules. One wonders whether this is the best we can do, whether our Constitutional principles are simply partisan weapons, brought into play depending on who will write and enforce the rules, and whether this fact alone will determine whether we cry "free speech" or not.

The question then becomes whether there is any general principle that should prevail regarding the governing of the academy and the relationship of its government to the general principles of Constitutional law. Or is it all a matter of whose ox is gored? If we are conservative, and college administrations are conservative, we are all for the independence and autonomy of the college and the university; when administrations become liberal or fall under the influence of liberal or radical students and faculty, conservatives will turn against the principle of academic autonomy. Alternatively, liberals will resort to the courts when conservatives are powerful in academic administrations but insist on their autonomous right to regulate speech when they are in control.

Law's Procrustean bed

The Constitutional law of free speech is a crude instrument, indifferent to the content of speech, and that is as it should be. At the margin, there is the potential limitation of

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libel law and the still-disputed question of whether "group libel" should be allowed as a cause of action, but, on the whole, the First Amendment, intended for the government of the polity, takes no stand on content.

My argument is that the college and university must take a stand on content. Indeed, in the instances involving Levin and Jeffries, the college did take a stand on content. It happened to be, because of the constellation of political forces, the wrong stand from the point of view of academic values. The search for truth was punished while the demagogic spread of falsehoods went unpunished. The college censured Levin but refused to act against Jeffries until forced to do so by a political uproar. The college administrators took a stand on content and were punished for doing so: Both men were exonerated, and could continue to propagate their point of view without fear of any loss of rights and privileges. Under the law of free speech, the differences between them became a matter of indifference. Under the principles that should govern an academic institution, they could not and should not have been a matter to which the administration was indifferent.

The heart of the matter is that an honest effort to reach truth through the established means of reason and research should have been respected, and that the demagogic advocacy of invented and harmful myths should not have been. The academic response in the two cases was exactly the reverse of what it should have been, which perhaps settles the matter. Crude as the instrument of Constitutionally defined free speech is for settling matters of truth and legitimacy in the academy, it is the only one available, and so there is no longer any argument for academic autonomy. That may be our situation today, but I would like to hold this unhappy, but very likely, conclusion in abeyance for a while in order to explore in somewhat more detail the unsuitability of the courts as the key arbiters in the issues raised by the *Levin* and *Jeffries* cases.

One oddity of the two cases was that they were resolved under the principles that govern the rights of public employees to speak without penalty. Thus, for example, the cases cited by advocates, judge, and appeals court deal with such issues as whether a comment by a government employee to

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the effect that the President should be assassinated was fair public comment, and therefore protected. (The Supreme Court ruled it was.)[9] The law of Constitutionally protected free speech turns out to be a Procrustean bed in which academic issues are placed uneasily. This law was developed in cases brought by public employees in hierarchical institutions of government with duties remote from scholarship and teaching. This seems hardly relevant to *Levin* and *Jeffries* and similar cases.

This law became applicable because City College is a public institution, and so it is properly regulated under law developed in cases brought by policemen, social workers, claims adjudicators, and the like. Whether the same law would have applied to a private university is murky, but it is hard to see how this distinction could have been maintained: Every private college and university takes public funds, or its students do, or it benefits from the tax code; ergo, it can be argued that it is also "public."

The Procrustean bed not only had to accommodate cases dealing with institutions hardly typical of public agencies, but it had to ignore the key differences between the *Levin* and *Jeffries* cases, differences that played almost no role in the trials or the opinions of the judge. Under the law of free speech, they could not.

Thus, the facts that Levin is a legitimate scholar working professionally in philosophy, that his objectionable views come from his work, that he publishes these views in professional journals where he constructs a coherent argument, marshals data, and footnotes his sources, and that his views can therefore be judged, criticized, and modified, whereas Jeffries has published nothing, despite a presence of more than 20 years at City College, were of no consequence. The problem with Jeffries is that he cannot play a role in the research and discussion process and in settling such matters as his claim about the Jewish role in slavery because he does not write and does not publish. Rather, he makes speeches to audiences incapable of judging the truth of his claims. The difference in the quality of their teaching, previously alluded to, can of course play no role in a free-speech case.

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[9] See Opinion and Order in *Levin v. Harleston*, reference to *Rankin v. McPherson*, 483 U.S. 378 (1987).

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Another difference, which might have been taken notice of in an academic context, was a matter of indifference in a free-speech case: Levin presented his controversial views outside of class and outside the context of the college. Is it a virtue or a defect from the point of view of an institution of higher education that his views on these topics were not presented in class or on the campus? It certainly suggests that he was not activated by any desire to heighten group conflict or animosity. Because he had to know his views would be controversial and arouse anger, he tried to keep them away from the context of his teaching. Possibly, he was simply being cautious and prudent in separating his views on these subjects from his teaching.

Perhaps this was a case of self-censorship that can be criticized in a teacher. Alternatively, it was a case of eschewing notoriety so that Levin's teaching would not be influenced by students' knowledge of his views on subjects that were only on occasion or tangentially relevant to the topics he discussed in his philosophy courses. Jeffries' idiosyncratic doctrines, on the other hand, were the chief subject of his classroom lectures and were presented at public meetings. There are intriguing issues here; they could not be handled in the context of free-speech proceedings.

Scholars and charlatans

But, finally, the key issue is truth. Levin was harassed for taking part in psychology debates over intelligence and its determinants and in moral-philosophical disputes over the legitimacy of taking into account in one's behavior towards individuals statistical patterns that differentiate various groups. Reginald Wilson, in his letter on Mary Lefkowitz quoted above, writes: "Ms. Lefkowitz says as long as it wears the trappings of science and 'reasoned argument' it's all right. This kind of vast loophole lets a lot of racist scholarship through." When racism wears the trappings of science and reasoned argument, it remains racism and should be condemned. But does this properly characterize Levin's work? Isn't there a means of distinguishing between racism wearing the trappings of science and legitimate science based on reasoned argument? If there is such a difference, if it is a meaningful one, who is

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capable of making the distinction? Certainly not the courts defending the right of free speech. As we have seen, they are indifferent to the content of the speech they defend.

If there is a difference between science, scholarship, and reasoned argument, and non-science and irrational argument—and I believe, despite some recent academic trends that seem to deny the difference, or our ability to make it, there is—the community of scholars and scientists must make the distinction and act on it, and one of the places in which they gather to do so is the college and university. This difference has to be taken into account in making academic distinctions.

It was taken into account at City College but in a perverse, if understandable, way. The serious pursuit of truth was greeted by disruptions, and the spread of nonsense, even harmful nonsense, was ignored. If the behavior of the serious scholar leads to disruption, and that of the charlatan is ignored by those who find it obnoxious, is the institution to penalize the first and ignore the second? Is it to respond primarily to the disruption, or is it capable of making a judgment between science and scholarship, and nonsense and charlatanry?

Because their concern was disruption, and black students supporting Jeffries and opposing Levin were undoubtedly more likely to be disruptive than students supporting Levin and opposing Jeffries, the authorities were severe in their actions against Levin. In the Jeffries case, despite deficient teaching and the absence of any publications, the college allowed him to remain for two decades as chair of the Black Studies department and acted to reduce the length of his chairmanship only on the basis of pressure from public officials and the media.

Levin deserved the protection of the administration against students trying to disrupt his classes; Jeffries deserved its contempt and whatever action it could take to limit his influence. If we defend academic autonomy, we have to confront the problem that the treatment of the two men was exactly the opposite of what it should have been. What about academic autonomy under these circumstances? Do we abandon it? Do we run off to the courts, so a decent scholar and teacher may be protected, even at the cost of the protection of a charlatan?

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Our situation today is that both will appeal to the courts, whether to protest decisions not to grant tenure, penalties under new rules of sexual harassment, punishments for unpopular opinions, or actions in response to political pressure. And the courts will find some basis, inappropriate as it may be to any given situation, for judgment. Just as any tenure decision today can be disputed in the courts on grounds of discrimination on the basis of race, sex, age, physical handicap, or what not, so any decision to uphold prime academic values of truth and responsible scholarship—if any institutions are so bold as to make such distinctions—would be disputed.

Mary Lefkowitz first got into this dispute when she reported the story of a visitor to the Wellesley campus in connection with Black History Month who claimed Aristotle had stolen his philosophy from the famous library of Alexandria in Egypt. When she pointed out this was impossible, that the library did not exist in his day, students said, "how do you know, maybe there is later information our visitor has that you are not aware of." Further, faculty members shied away from the issue because it wasn't their field. If this is the way our academic institutions manage such issues today, if we can expect their students, faculty, and, yes, often their administrations, to respond to arrant nonsense in this way, perhaps there is no alternative but the courts, which may be able to impose at least a modicum of crude fairness.

This means that the courts will also intervene in such matters as whether a chairman should serve for three years or one, and in doing so, they will, of course, not be able to take into account the many subtle factors that go into making such a decision (or that go into decisions on tenure). They will be able to wield only the clubs of free speech or nondiscrimination. Of course, these principles should be adhered to in colleges and universities, as they should be throughout society. But when we give them absolute primacy, the proper functions and prime aims of academic institutions will be reduced to insignificance. We will be fair: Truth and nonsense, competence and incompetence, will hold the same position.

Maybe there is no alternative. City College was certainly doing a very poor job in making these necessary distinctions. However, when it was corrected by the courts, it was not, as

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we have seen, to uphold truth and competence but free speech. Maybe the ideal of academic autonomy has become an anachronism, and there is no alternative to the courts in a case such as Levin's or Jeffries': The institutions cannot be expected to act right and must be viewed with minatory suspicion.

I would prefer to think of the present situation as simply a bad time in colleges and universities—not all of them—and believe that academic ideals remain as ideals, and will prevail in many institutions in decision making. For the rest, one has the options of voice or exit. If voice will be ignored by a herd of conformists, and exit is too personally painful, then there still remain the courts and the law, with all their limitations. We should not be too comfortable with this last alternative if we have any concern for the mission of institutions of higher education.

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Towards excellence in education

CHESTER E. FINN, JR.

THE battle lines over education reform have been drawn. Republican presidential candidates urge that the 15-year-old Department of Education be scrapped, and several members of Congress have already introduced "abolition" bills. A huge ruckus has arisen over federal interference, national standards, outcome-based education, and the Clinton Administration's *Goals 2000* program. Meanwhile, the Clinton Administration seeks $30.7 billion in fiscal year (FY) 1996 to fund the Department of Education's 250-odd programs. That is not a vast sum by contemporary Washington standards, but it works out to nearly $500 for every school and university student in the land. It is not unreasonable to ask what sort of return we can expect on this investment in relation to the problems plaguing American education today.

The House Budget Committee recently asked me to reflect on that question. Here is the answer I offered: If Congress wants to strengthen the quality, productivity, and efficiency of

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American education, as well as the performance of students passing through it, then further investment in the current array of federal programs is not a promising use of resources. With rare exception, these programs were designed for wholly different purposes—expansion of access, promotion of equality, and extension of services—and there is no evidence that efforts to adapt them to goals of quality and excellence have succeeded. Strategies formulated to increase the *quantity* of educational services available to people cannot be counted upon to boost the *quality* or performance of an education system in which mediocrity has long since overtaken scarcity as the central problem in need of solution.

Moreover, as the years have passed, those quantity-serving programs have been captured by educational "providers" and do not reliably serve the interests of quality-minded "consumers." They were designed for an era when it was believed that states, communities, and families could not be trusted to do the right thing, and that Washington and its experts should therefore set rules and make decisions. Today, however, the heavy hand of Uncle Sam deters more reform in education than it fosters.

From quantity to quality

There is a long-standing, if rather academic, argument about whether education is a "private good" or a "public good." If it were strictly the former, individuals would profit from obtaining more schooling, but the larger society would not. In such a circumstance, all spending on education should be private, not courtesy of the taxpayer or government at any level. (We could view automobile ownership in this way. We expect people who want cars to muster the private means to purchase them in the marketplace.)

If, on the other hand, all benefit from education accrues to the larger society, and none to persons receiving it, it would be foolish for individuals to spend anything out-of-pocket to receive better schooling. All support of education would properly come from "public" resources. (This is how we think about national defense and highway construction.)

We find most Americans between these two poles, recognizing that education confers both private gain and public

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benefit. This is also where most analysts come down. Their consensus is well stated in *Making Schools Work* (Brookings Institution, 1994), by University of Rochester economics professor Eric A. Hanushek and a panel of education economists:

> A look at the history of the twentieth century suggests that schooling has generally been a good investment.... The average earnings of workers with a high school education remain significantly above those of the less educated, and the earnings of workers with a college education now dwarf those of the high school educated.... Society as a whole also benefits from education. The nation is strengthened economically by having workers with more and better skills.... The more educated are more prone to vote in local and national elections, and a better-informed and more responsible electorate improves the workings of a democratic society. Increases in the level of education also are associated with reductions in crime.
>
> Education has also helped to achieve both greater social equality and greater equity in the distribution of economic resources.... [F]or our purposes it is safe to say that education has been a good investment both for society and for individuals.

The context of that investment has changed, however. Adding resources for education was straightforward, so long as the goal was purchasing more of it, and the money served to enlarge or equalize the delivery system. At the turn of the century, just 6 percent of American adults had finished high school. By 1967, half of the adult population was walking around with diplomas. About 94 percent of today's young people complete high school sooner or later. Getting to that point required a vast expansion of the supply of education, which cost a great deal of money. But elementary and secondary schooling is now readily available to all who want it.

Much the same situation obtains in higher education. Sixty-two percent of high-school graduates proceed immediately to college. By the time Americans reach their early forties, 56 percent have had some college education and 28 percent possess a bachelor's degree. A large majority of American campuses are essentially "open-admission" institutions. Indeed, the hunger of colleges and universities for enough warm bodies to fill all the places in the vast post-secondary education industry now aggravates the low standards of our primary and secondary schools. So ample is access to educational services that it

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has begun to undermine their quality. That is why, as we approach the limits of growth in the quantity of education, further societal gains need to come from improving its performance. The central reason that the nation is "at risk" today is not because we are not supplying enough education but because our students are not absorbing enough of it.

The United States can take pride in having mustered the will and the means to solve the problems of equitable access and sufficient services. The question now is whether we can steel ourselves for the more difficult challenges of performance and efficiency.

The federal role in education

The U.S. Constitution never mentions the word "education," whereas it is embedded in the constitutions of all 50 states. Yet, today, the federal government is deeply engaged in many aspects of education. Besides the Department of Education's hundreds of programs, many other departments and agencies are involved, from Health and Human Services (Head Start, financial aid for medical students, etc.), Labor (sundry job training schemes), and the National Endowment for the Humanities to the National Science Foundation and even the Pentagon. Across the government, education support in FY 1994 totaled $68 billion in "on-budget" outlays and nearly $20 billion more in "non-federal funds generated by federal programs" (most of the latter being private capital for government-guaranteed loans to college students).

Though the seeds of federal involvement were sown in the nineteenth century, the federal government's present role in education was shaped during the mid-1960s. Most of today's federal programs and activities in education continue to reflect the priorities, assumptions, and values of that era: an expansive national government that spends whatever is needed to supply resources to people who lack them; ending inequality and poverty by redistributing opportunity and services through a thousand federal programs, shaped and run by professionals; and the sublime confidence that "Washington knows best." Above all, the architects of the education programs of the 1960s believed that the nation's education problems were problems of shortage—and that their solutions lay in boosting

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the supply of education services and the access of those who had been deprived.

One need not dispute this mid-1960s reasoning. There were genuine access and equity problems at the time, and it was not unreasonable to enlist the national government in their solution. But the world has changed in the last three decades, and with it the essential nature of the education problems facing the United States. Yet, today, we still find ourselves with programs conceived for yesterday's purposes. Though "quality" has recently entered the rhetoric of federal program managers and advocates, those programs were not designed to meet this criterion. Moreover, there's little reason to believe that they will successfully make the switch from quantity to quality. That would be like entering a milk truck in the Indianapolis 500; it will not do well in this setting because it was not built for speed.

Let me set forth five aging assumptions that underlie most Department of Education programs and activities, followed by the new realities that they ignore. All five come straight from the social-reform handbook of the mid-1960s.

(1) The great problem of American education is that some people get more of it than others do. Access must be expanded and underwritten, particularly for needy groups (the poor, the handicapped, minorities, non-English speakers, etc.) that are not receiving enough services and have in some cases been denied them. Because states and localities are not meeting these needs and cannot be trusted to do so, it is the federal government's obligation to intervene.

Today, access is virtually universal, but the quality of what children have access to is mediocre, expectations are low, and results are unsatisfactory. Federal interventions have created perverse incentives (such as classifying more and more children as "disabled") and have impeded bold reform efforts such as school choice.

(2) States and communities are stodgy, miserly, sometimes discriminatory, and ignorant about good research and practice. The federal government needs to foster innovation, justice, and the dissemination of knowledge.

Today, states and communities are taking the lead in transforming the schools, but federal policies often get in their

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way. Moreover, in an age of CD-ROMs, on-line information services, faxes, e-mail, cable television, conference-calling, and widespread travel, state and local educators have easy access to all the knowledge and expertise they can use.

(3) A unified, centrally managed, and essentially monopolistic public school system is the best way to distribute resources according to national priorities and is, accordingly, the proper focus of federal policy and programs.

This assumption goes back to the "scientific-management" ideas of the 1920s and to the belief that "public" schools mean schools run by government agencies. Today, however, many people understand public education as a network of schools that all *serve* the public but may be organized and run in a thousand different ways. Federal programs, however, discriminate against such alternatives as non-government schools, charter schools, and home-schooling.

(4) Redistributing resources from people, states, and regions that have more to those with less is both a proper function of the national government and a way to improve education. Hence, poverty and other gauges of "neediness" should be the primary basis for receiving federal education aid.

As with welfare, the redistributionist ethic has had perverse effects within federal education programs, such as "punishing" schools and individuals that pull themselves out of ignorance and poverty. Moreover, our single-minded focus on "equality" has softened or erased standards lest some fail to meet them.

(5) Experts know best. The professionals who deliver education are, therefore, Washington's primary clients, even though the resources are provided in the name of needy consumers.

Consumers now have very different ideas about education reform than do the "experts," and many would make different decisions about the use of resources if they could. The federal government's deference to "producers" is not confined to education, of course, but here, as in other fields, it serves to shore up the status quo, keep power with the "establishment," and deter radical change. It also underwrites bureaucracy, subsidizes the very organizations that lobby it for more money, and pumps billions into the bank accounts of middle-class professionals.

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Four failures

These hoary assumptions still guide the expenditure of nearly all of the money that Uncle Sam spends on education. Yet, there is no evidence that the average American child will learn more, that the typical school will become more productive, or that the quality of American education as a whole will improve as a result of continuing such "investment" policies. Let me briefly discuss four examples.

Title I. This is the largest single program at the Department of Education, accounting for $7.4 billion in the Clinton budget request. It has changed its name a couple of times and gone through eight major re-authorizations (most recently in 1994), but the essential program dates to 1965. Close to $90 billion has been spent since its inception. The underlying rationale was, and remains, meeting the "special educational needs of educationally deprived children" by providing their schools with additional money to be used for "compensatory" services such as tutoring.

Cautionary notes were sounded at the outset, especially about the shift of power and control to Washington. In their "minority views" on the 1965 bill, for example, eight Republicans termed it "the most direct and far-reaching intrusion of Federal authority into our local school systems ever proposed in a bill before Congress." They were not crying wolf. They had spotted an essential characteristic of Great Society programs, here applied to the nation's schools:

> At first reading, this bill appears to leave approval of local programs to the State education agency, where the power belongs. However, there is inserted (hidden, almost) a power in the U.S. Commissioner of Education to require that such approval be consistent with basic criteria formulated by him. This effectively robs the State agency, or the local schools for that matter, of any real authority to shape the programs. This centralization of power in the U.S. Office of Education runs throughout the bill.

Thirty years later, that precise situation still obtains, except that the money is greater and the stakes are higher. What was then an "Office" is now a full-fledged cabinet department, the statutory language is far more prescriptive, and the accompanying regulations are truly voluminous.

But have poor children *learned* $90 billion more during

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these three decades? The Department of Education was refreshingly candid in September 1993, when it explained why the program should (again) be reformed by arguing that it was not accomplishing much:

> Chapter 1* is no longer closing the gap between disadvantaged students and others.... The progress of Chapter 1 participants on standardized tests and on criterion-referenced tests was no better than that of nonparticipants with similar backgrounds and prior achievement. More generally, the relative performance of students in very high-poverty schools ... actually declines from the early to the later grades.... Chapter 1 has little effect on the regular program of instruction.... Chapter 1 frequently does not contribute to high-quality instruction.... Chapter 1 is not generally tied to state and local reform efforts....

The authors of that report, and of myriad other evaluations over the years, naturally intended their gloomy conclusions to justify still more changes in the federal program. In this instance, the 103rd Congress agreed to some (though not all) of the amendments sought by the Administration, and President Clinton's FY 1996 budget justification predictably asserted that the program will henceforth be more effective.

Possibly. But it is well to take a step back and ask whether this much-revised federal education program does not, in one key respect, resemble the oft-reformed welfare program: Washington policy makers have tried time and again to revamp it so that it will actually accomplish its intended purposes, yet none of these repairs, now spanning several decades, has solved the basic problem. Should we try yet again to reform this education program in Washington, pouring more resources into it, only to discover again in a few years' time that the program is still ineffective? Or should we consider an altogether different strategy?

The sums involved here are substantial. If the money requested for FY 1996 were targeted to the lowest-achieving 10 percent of U.S. students, it would work out to almost $1500 apiece—enough to pay the tuition at most Catholic schools, even without state and local funds. If targeted to the lowest-achieving fifth, it would amount to about $750 each—about

* The Title 1 program is here referred to as "Chapter 1," a usage common during the 1980s and early 1990s. The 103rd Congress restored "Title 1" as the standard reference.

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what private firms charge for boosting the Scholastic Aptitude Test scores of upper-middle-class high-school students.

The "tracking" fallacy

Vocational Education. The Department of Education requested $1.2 billion for vocational education in 1996, not including $200 million—plus a like sum for the Labor Department—for its newly enacted "school-to-work" program and not including other billions for job training and tuition aid. Federal vocational-education outlays since 1960 total about $25 billion.

This program's antecedents can be traced to World War I, when the Smith-Hughes Act provided funds to states to underwrite the salaries of teachers and others involved with preparing young people for industry, agriculture, and home economics. Federal vocational-education programs have been amended many times since, but they still partake of what can be termed the "tracking" assumption, namely, that some young people are headed for college, others for the job market, and that the education provided to the two groups should be fundamentally different.

That way of running the schools may have been suited to an industrial economy when only a small elite needed a solid liberal education in order for the nation to prosper, and when people quickly settled into career paths from which they seldom veered. Today, however, most people have several different careers. Just about everyone needs substantial knowledge and strong skills to handle the challenges of the post-industrial economy and the information age. Also, practically everyone needs the habits, self-discipline, motivation, and ability to interact with others that modern workplaces require.

Separately tracked vocational programs, in other words, have no proper place in today's schools. A unified curriculum that sets the same challenges and standards for everyone is indicated, and it should be taught as engagingly as possible (not excluding the kinds of practical problems and real-world applications once associated only with "vocational" courses).

Besides, today's vocational students are not learning much. According to the 1994 National Assessment of Vocational Education conducted by the Department of Education, academic-

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track students score at about the seventy-first percentile on standardized achievement tests, while the average score of vocational students is at the thirty-fourth percentile. One study found that "students give up some achievement gains by foregoing academic courses and taking vocational courses instead." Academic-track students even score higher than vocational students *on a test of industrial-arts knowledge.*

The formidable "vocational-education establishment" resists fundamental change. Yet such change is exactly what is needed. Even the Clinton Administration seems to have recognized this, as it begins to bypass vocational education in favor of its new "school-to-work" program and, remarkably, to replace traditional job-training programs with vouchers that consumers can use as they see fit. Why, then, also spend one billion-plus each year on the discredited approach of vocational training?

Bilingual Education. Washington's involvement with bilingual education dates to 1968. Approximately $3.5 billion in federal funds will have been spent for this by the end of FY 1995. For 1996, the administration asked for $300 million, a 20 percent increase. As federal programs go, this is not a huge sum, but bilingual education is a classic example of the corruption of a well-intentioned impulse and the seizure of a federal program by special interests. Above all, it's an example of a program that does not accomplish what most voters and taxpayers think it is meant to do. In reality, it does not even try.

The typical taxpayer supposes that the focus of this program is on teaching English as quickly as possible to immigrant and refugee children who arrive in the United States speaking another language. But that isn't how most bilingual educators see it, and is not, in fact, how the federal program operates. The program attempts to reinforce the child's original culture and native language, using that language as the primary vehicle of instruction and only very gradually developing English fluency. In other words, many bilingual educators are more interested in sustaining the ethno-linguistic, cultural, and political distinctiveness of immigrant populations than in aiding their rapid assimilation into the "mainstream."

Federal bilingual-education programs advance these agendas with money, experts, regulations, and legitimacy. It is never

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said baldly, of course, but a studied ambiguity has been present since the beginning. The congressional policy statement introducing the 1968 Bilingual Education Act, for example, never stated that the objective of the program was rapid English fluency. Rather, it spoke of "new and imaginative elementary and secondary school programs designed to meet" the "special educational needs of the large numbers of children of limited English-speaking ability in the United States."

Today, a close reading of the Administration's 1996 budget justification reveals *not a word about English fluency*. Instead, it talks of "high-quality instructional programs for recently arrived immigrants and other limited English proficient (LEP) students." Indeed, Congress has capped how much money can be used for the kinds of programs that promote rapid English fluency, often called "English immersion" or "English-as-a-second-language" (ESL) approaches. Only 25 cents of the federal bilingual dollar may be spent for such programs. At least 75 cents must be used for the approach commonly called "transitional bilingual education," in which the native language is used as the main instructional medium.

What difference does it make? A recent study by the New York City Board of Education found that youngsters enrolled in ESL programs acquired English faster, and were able to "test out" of the program sooner, than those enrolled in the "bilingual" programs favored by the federal government. (This finding held even when initial language facility was factored in.) And an analysis of the research literature by Boston University political scientist Christine Rossell found that most studies show "transitional" bilingual programs to be "no different or worse than ... doing nothing." Yet that's where the lion's share of the federal money goes.

Laboratory waste

Regional Educational Laboratories. This is a small program, just $40 million in 1996, but it is another classic case in point. For 30 years, the federal government has been supporting this array of "middleman" institutions. Total expenditures come to more than half a billion dollars (not counting other federal funds that the laboratories have won). Total benefit: practically nothing.

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It's not easy even to explain what a "regional educational laboratory" is meant to be or do. Their designers in the mid-1960s (notably President Johnson's Task Force on Education, chaired by John W. Gardner, who later served as Secretary of Health, Education and Welfare) visualized organizations that "would develop and disseminate ideas and programs for improving educational practices throughout the country." They seemed to have something like Los Alamos in mind, describing the new organizations as "akin to the great national laboratories of the Atomic Energy Commission."

What emerged instead was a collection of 10 small, nonprofit organizations spread across the country, which undertook a mishmash of research, dissemination, and technical-assistance activities, aimed mostly at state and local education agencies. It was assumed that states and communities lacked access to good information, could not end this drought for themselves, and needed help from intermediaries created and underwritten by the federal government. This was plausible 30 years ago, when many state and local education agencies had meager research capabilities, information could not be obtained by searching a CD-ROM disk or going on-line with a distant expert, and "regional" organizations were thought necessary to narrow the distance between communities and the nation as a whole.

Doubts arose early, however. In the early 1970s, Dean Francis Chase of the University of Chicago's School of Education observed that the laboratories

> were going in all directions—service-oriented, research-oriented, giving grants to people who couldn't have gotten them in national competition, some behaving like state departments of education, others behaving like weak schools of education. A lot of trial and error.

That is pretty much the situation today. Some of the research undertaken by the laboratories is useful; much is not. (After conducting the most careful examination in their history, University of Michigan scholar Maris Vinovskis in 1993 found "serious conceptual and statistical limitations" and "flawed and misleading analyses" in a great amount of the laboratories' research work.) As a whole, the program has outlived whatever justification it once had. Today, the country is awash

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in organizations that supply education policy makers and practitioners with information, advice, and technical assistance. They do such a good job that most of their recipients can now readily obtain more information than they can absorb.

Meanwhile, the laboratories entrenched themselves with the help of powerful lobbyists and congressional protectors. They have enjoyed an appropriations "earmark" or "set-aside" every year. They managed to get through their first two decades without even having to compete for the contracts through which their main federal subventions flow. Competitions were finally held in 1985 and 1990, but so formidable is the laboratories' power and the presumption of their continuing monopoly that few invested the energy to vie with the incumbents. Another such competition—leading to another five-or-more-year contract—has recently begun. Once again, however, nobody expects more than one or two of the present laboratories to face any challengers.

Federal funding of the regional educational laboratories is a textbook instance of what Senator Daniel P. Moynihan (D-N.Y.) has termed "feeding the sparrows by feeding the horses." The putative beneficiaries are schoolchildren who need to learn more. Yet, the money actually goes to well-paid professionals, sitting in comfortable offices far distant from the classroom, insulating themselves from most of the changes in American education and devoting much of their energy to ensuring that their federal gravy train does not halt on the tracks.

Real reform needed

Plenty of other examples could be cited, but they point to the same conclusion: The central policy problem posed by the Department of Education is that it has not adapted itself to the changing nature of our educational dilemmas.

A strong case can be made (and has been by former education secretaries William Bennett and Lamar Alexander) that the federal role in education should be virtually eliminated—and the Department of Education dismantled. A powerful argument can also be made that responsibility, authority, and resources for education should move from Washington to the states, communities, and families. Insofar as any federal involvement with education remains, it should be wholly recast

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around today's needs rather than those of the mid-1960s. It should be constructed around productivity, efficiency, accountability, and pluralism. It should reward performance rather than subsidize the delivery of services. Its primary clients should be consumers, not producers. Its chief implementers should be governors and mayors, not education professionals. Its watchword should be quality, not quantity.

Unfortunately, what the Department of Education will actually do with most of the money it will get for FY 1996 is diametrically opposed to these criteria. This is not because the department is evil, but because its culture, traditions, values, procedures, governing statutes, and constituencies all press in the opposite direction. If Congress wants to reverse its direction, an immense undertaking awaits—one that is manifestly worthwhile and long overdue.

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The courts vs. educational standards

MICHAEL HEISE

FEW aspects of the current school-reform effort rival the prominence accorded to educational standards. The federal government's most comprehensive and far-reaching reform project, *Goals 2000*, underscores educational standards' key role in a nationwide effort to improve student achievement. Whether the development of educational standards will do so is, as of yet, unclear. It is clear, however, that standards will serve as a catalyst for the next generation of educational litigation.

By converging with emerging legal doctrines forged by school-finance litigants at the state level, educational standards, even voluntary ones, will attract litigation designed to turn standards into legal entitlements. When courts find that funding increases are necessary to meet educational standards, states will be required to provide the additional funding. The new litigation that will follow from the development of standards will thrust the courts further into educational policy making, with the results more likely to benefit lawyers than

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students.

Setting aside the question of whether the courts ought to be crafting education policy at all, little is even known about whether litigation is an effective mechanism for achieving desired educational policy goals. The courts' influence over schools exploded after the Supreme Court's *Brown v. Board of Education* decision in 1954. Today, it is difficult to imagine any aspect of schooling not influenced by laws, regulations, and courts. Yet, legal scholars and lawmakers do not fully comprehend the nature, extent, and contours of the courts' profound influence on schools. Indeed, legal impact research on the relation between courts and educational policy is scant, qualitative data thin, and quantitative data all but nonexistent. Despite this substantial void in the research base, the pursuit of educational standards seems certain to stimulate litigation. The inevitability of such a result is unfortunate, illustrating how well-intentioned educational policies and existing legal doctrines can sometimes work at cross-purposes.

State constitutions distorted

The success of courts in using state constitutions to mandate education policy suggests that *Goals 2000* will be used to much the same effect, sparking a new wave of education litigation. The state constitution expresses a state's obligation to provide educational services to its residents, and dictates that the legislature possesses plenary authority to delegate this obligation through whatever administrative mechanism it likes. To school-finance litigants, however, state constitutions, particularly education clauses, provide a mechanism to achieve judicially what they are unable to achieve legislatively.

During the 1970s and 1980s, school-finance equity lawsuits sought to equalize per-pupil spending. Traditional equity-based lawsuits asked courts to assess whether per-pupil spending gaps between school districts with high property values and those with lower property values offended state constitutions. In *Serrano v. Priest*, the California Supreme Court ruled the state's school-finance system unconstitutional because it could not find a compelling reason to justify the gaps in per-pupil spending among school districts within the state. The *Serrano* decision, an important equity-lawsuit victory, awakened the

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country to the constitutional dimensions of unequal per-pupil spending.

Since 1989, school-finance litigation has differed in some important respects. Specifically, adequacy-based school-finance lawsuits have replaced equity lawsuits. In adequacy lawsuits, plaintiffs ask the court to assess the underlying sufficiency of the school funding and educational services provided to schoolchildren. Courts now find school-finance systems unconstitutional not because wealthy districts spend more money on their students than do less-affluent districts but because the quality of educational services delivered to students in less-affluent school districts—regardless of per-pupil spending—is inadequate. Courts have already reached such decisions in a handful of states, including Kentucky, Massachusetts, and Alabama, with more decisions likely in the future.

The recent emergence of school-finance adequacy lawsuits alters school-finance reform and related litigation. Most scholars agree that an emphasis on the quality of education provided by school districts, rather than gaps in per-pupil spending, represents the future of school-finance litigation. Recent school-finance court decisions suggest that the future has arrived.

A recent state-court decision in Alabama is illustrative, demonstrating the startling scope of school-finance court decisions. In *Alabama Coalition for Equity v. Hunt*, the plaintiffs asserted that the substantially unequal educational opportunities provided by the state's public elementary and secondary schools violated the Alabama Constitution. The court agreed, invalidating the state's school-finance system and concluding that Alabama's education clause guaranteed substantive entitlements, including "adequate" educational services. Considerations such as the political-question and separation-of-powers doctrines proved not to be a barrier.

A comparison of the actual constitutional text with the judge's order illustrates the extent of the court's reach. The education clause in Alabama's constitution, similar to those found in other state constitutions, provides that "The legislature shall establish, organize, and maintain a liberal system of public schools throughout the state for the benefit of the children thereof." The court in *Hunt* concluded that this lan-

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guage created a substantive legal entitlement to an "adequate" education. The court went on to note that an adequate education provides students with an "opportunity to attain" such factors as "sufficient mathematical and scientific skills to function in Alabama, and at national and international levels." Further, an educational system should offer "support and guidance so that every student feels a sense of self worth and ability to achieve." By articulating minimum educational standards where none existed before, the court in *Hunt* injected itself into a crucial educational dispute, which will unfortunately continue to occupy many state legislatures well into the next century.

Although the *Hunt* decision reflects a growing trend in school-finance litigation, judges in some school-finance cases decline the invitation to join the growing and already messy policy battles over educational funding. Judges who balk when asked to assess the adequacy or sufficiency of school-funding systems or educational resources typically cite the absence of relevant standards, judicial or otherwise. Such judges find it difficult to hold states accountable to non-articulated standards and are unwilling to fill the void from the bench. Educational standards, however, will fill this void, thereby facilitating even greater judicial involvement in school-finance issues.

Enter *Goals 2000*

The decision to establish educational standards presents states with an interesting dilemma. On the surface, educational standards appear to be a relatively inexpensive way to improve student achievement. Also, *Goals 2000* offers federal funds to encourage states to join the education-standards movement. Many states will find the financial lure irresistible. However, a closer look reveals that educational standards increase states' exposure to potentially costly litigation—particularly school-finance lawsuits.

States' increased legal exposure stems from at least three factors. First, policy makers do not yet agree on what content and opportunity-to-learn standards should look like. Policy questions about what students should know and what constitutes an adequate opportunity to learn will quickly become legal

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questions. Second, the task of translating policy goals into statutes, rules, and regulations invites ambiguity, particularly in the education area. Litigants will ask courts and judges to resolve these ambiguities. Third, and most important, educational standards will encourage emerging judicial efforts to assess school systems and their finance systems. Successful lawsuits will result in courts extracting increased educational spending from state legislatures. Each of these factors individually will create more business for civil-rights lawyers and education-law specialists. Cumulatively, these factors establish the foundation for the next wave of educational litigation.

The unlikely prospect for agreement over the composition of educational standards is one source of increased judicial involvement with schools. Of course, it remains possible that a consensus could emerge on content standards. Residents in a state could agree, for example, that its students must master fundamental mathematical concepts as a condition for high-school graduation. However, it remains far from clear what those specific mathematical concepts should be. As daunting as this task sounds, developing a consensus on content standards—what constitutes an acceptable core curriculum—is at least a plausible proposition.

In contrast, agreement over the composition of opportunity-to-learn standards is less likely. Opportunity-to-learn standards are supposed to help ensure that schools and school districts provide students with the resources needed to achieve chosen content standards. Their creation will involve identifying what contributes to a successful learning environment. For example, it would strike many as unfair to expect that a student master the fundamentals of geometry if that student's school did not offer a geometry class, lacked relevant textbooks, or failed to provide a competent geometry teacher. Similarly, it would be unfair to require a student to reach world-class levels of achievement in science if schools did not have the necessary scientific or laboratory equipment.

Apart from extreme situations, the debate over opportunity-to-learn standards will uncover a vast area where reasonable people can differ on what constitutes an adequate opportunity for students to meet specific educational standards. Because few agree on the determinants of student achievement,

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it will be difficult to assess whether appropriate or adequate learning facilities exist. Many of these debates will spill into the courts.

Even if policy makers were in perfect agreement over content and opportunity-to-learn standards—and they are not—a substantial risk of future litigation remains. Statutory ambiguity is a second and perhaps inevitable source of future lawsuits. The difficult task of translating policy goals into statutory language always invites a certain level of imprecision. Sometimes lawmakers intentionally create statutory ambiguity for political reasons. In other instances, problems arise from the large number of politicians that educational-reform legislation usually attracts.

One reason for their avid attention is obvious—votes. Schools, teachers, administrators, schoolchildren, and parents are found in every state and congressional district. Moreover, the amount of money involved in education-reform efforts is substantial, and the interest groups (e.g., teacher unions) are powerful. These factors thrust numerous lawmakers into policy debates over educational legislation, increasing the need for political compromise and thereby increasing the likelihood of statutory imprecision. Ultimately, litigants will call on judges to resolve these inevitable ambiguities.

Opening the litigation floodgates

The third and most important factor that will accelerate future educational litigation involves the interaction of educational standards and school-finance litigation. Most likely, a gap will emerge between a state's idealistic educational standards and existing student achievement. School-finance litigants will attempt to leverage this gap and force states to provide the additional resources supposedly needed to enable students to meet a state's educational standards.

The eight national education goals that serve as a lodestar for many state content and opportunity-to-learn standards are idealistic and, sadly, unrealistic, particularly in light of current American student-achievement data. For example, one national education goal established a target date, now five years away, for American students to lead the world in math and science achievement. Yet, American students now place near or at the

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bottom of most reputable international math and science assessments.

If history is a guide, politicians, litigants, and judges will find it difficult to attribute responsibility for substandard academic performance to students and their families. As a result, attention will immediately be directed towards schools and their educational resources, reflecting the assumption that the schools, and thus the state, are failing their students. Once attention shifts to educational resources, another gap will emerge between a state's existing educational resources and those deemed necessary to meet desired educational goals. By establishing content and opportunity-to-learn standards, states invite lawsuits intended to fill this gap.

Legal impact studies

The prospect of increased judicial activity in educational policy making—stimulated by the development of educational standards—raises important research and policy questions. It is far from certain that the courts are well-suited for achieving desired policy goals in the area of education. Few clear answers emerge from past and current judicial oversight of public schools. The specific question about whether school-finance court decisions are likely to result in sought-after finance reform remains largely unexamined. Results from recent, preliminary quantitative studies are mixed. However, anecdotal evidence from states where recent adequacy lawsuits succeeded, such as Kentucky, demonstrates that court decisions can have significant impact.

Central to the debate about how and what types of court decisions influence social policy is the state of legal impact research. Assessing the impact of court decisions on social policies is an extremely difficult task. Numerous variables move simultaneously in different directions. Also, different people can view a single judicial intervention differently. Despite methodological challenges, a small but growing number of legal scholars is beginning to address such questions, although few with empirical rigor.

However, increased interest in quantitative legal impact scholarship appears imminent. A growing number of legal scholars is calling for the application of the social sciences to tradi-

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tional legal research. For example, in his recent book, *Overcoming Law*, Judge Richard A. Posner emphasizes the utility of quantitative methodologies in assessing legal doctrines' impact on social policy. Calls for such research from the nation's preeminent legal scholars will likely increase the amount of work being done in this important new field.

A particularly worrisome aspect of the courts' involvement in social policy is their seeming inability to disengage from supervision once begun. The nation's experience with school desegregation aptly illustrates such difficulties. Although more than 40 years have passed since *Brown v. Board of Education*, federal courts remain embroiled in the desegregation effort. Prolonging the debate about when courts can cease oversight and for what reasons is the realization that certain essential concepts resist consensus, such as the legal definition of a "fully integrated" or "unitary" school system. As litigants continue to fight over definitions in courts, the direct and indirect costs associated with school-desegregation efforts continue to increase.

School-finance litigation will encounter similar problems. The generation-long struggle either assigned to or assumed by the courts over what "equal educational opportunity" means in terms of race is about to be replaced. A strikingly similar struggle will ensue over what equal educational opportunity means in terms of resources. The evolving school-finance debate promises to be just as contentious and protracted. Although much of the current debate resides in state legislatures, the transition to the courts is clear and already underway. School-finance debates will remain in the courts for years to come.

Notwithstanding the problems posed by increased judicial involvement in educational policy making, a "judicial strategy" makes sense for the educational establishment, particularly teacher unions. Education is a highly labor-intensive enterprise, and, accordingly, labor costs consume the bulk of most school districts' budgets. Annual legislative pleas for increased educational resources are beginning to wear thin on taxpayers. Taxpayer revolts flare up with increasing regularity across the country. Communities reject school-board referenda with greater ease. Big-city school districts such as New York and Chicago

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do not dare try to raise money through the ballot box. Instead, they must meet their financial needs through the more expensive capital markets. In a few instances, public school systems simply have run out of money and declared an early start to summer vacation.

In such a political environment, it is understandable that those seeking additional resources for school systems are eager to steer away from legislatures and the political process and towards courts and the legal process. Courts provide an alternative to increasingly skeptical legislators and a more discriminating "political marketplace." By recasting school-finance disputes as legal questions, litigants attempt to get from the judiciary what they could not get from the legislature. Of course, state legislators would not take kindly to such a judicial strategy. After all, successful school-finance lawsuits threaten to cost state governments dearly and reduce legislators' discretion over policy making and budgets.

Legal entitlements

Many of the nation's elementary and secondary schools must become more effective for a greater number of children. American students' performance lags behind that of their foreign counterparts, especially in core academic subjects. Past school-reform efforts, even well-meaning ones, largely failed to meet their stated objectives. Improving frustrating student-achievement trends will require changing existing policies and developing and implementing new ones. Decades of unsuccessful reform efforts suggest that future efforts must consider fundamental changes to the current production and delivery of educational services.

Viewed in this context, the push for educational standards reminds us that problems with our educational system endure. However, different problems will emerge when policy battles over education move out of legislatures and into the courts. In particular, the development of educational standards will trigger the next round of school-finance litigation. This litigation will further increase judicial involvement in educational policy making, as litigants struggle to transform content and opportunity-to-learn standards into legal entitlements.

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Intelligence and the social scientist

LEON R. KASS

ONCE upon a time, before science and society got into bed together, serious attention was given to the question of dangerous knowledge. First it was an issue between philosophy and the city (e.g., Athens against Socrates), later between science and biblical religion (e.g., the Church against Galileo). Keenly aware of knowledge's power to harm as well as help, even the great founders of modern science advocated self-censorship and practiced the art of veiled writing, not only to avoid persecution, but also to protect those who might be harmed by their "dangerous" truths.

René Descartes, mindful of the trial of Galileo but also eager to ward off unworthy followers, suppressed his radical scientific treatise, *Le Monde*, anonymously publishing instead a "mere autobiographical fable," *The Discourse on Method*, which subtly tells only the discerning reader the core of what *Le Monde* contained. And, in *The New Atlantis*, the ideal community ruled by his new practical science of nature, Francis Bacon has the scientists deciding among themselves which

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discoveries to make public (i.e., to publish) and which to keep secret.

Today, in our liberal, open, and "enlightened" society, we may worry about the bad effects of technology, but we believe wholeheartedly in the goodness—or at least the innocence—of knowledge. With us there is virtually no thought or opinion so dreadful or offensive that it cannot be—and is not—shouted from the rooftops. Thus, the issue of dangerous knowledge is now quite limited in scope and contested only by intellectuals. Yet they do so arbitrarily: the very same people who scream freedom of expression for Snoop Doggy Dogg or Robert Mapplethorpe, or who cannot understand why there is a contract out on Salman Rushdie, would be only too happy to silence—or academically lynch—Charles Murray and his late partner, Richard Herrnstein, for publishing their findings about the vexed subject of intelligence, genetics, and race. The vicious attacks on *The Bell Curve*† and its authors have been an ugly spectacle. But their enemies are right at least in this: there are vital matters at stake and the issue of dangerous knowledge is in this case well worth some attention.

Nothing but the truth?

Almost 25 years ago I witnessed up close two acts of censorship practiced by no less than the National Academy of Sciences, the American Olympus of scientific distinction. A report entitled *Assessing Biomedical Technologies*—I, as executive secretary, had drafted it for the National Research Council's Committee on Life Sciences and Social Policy—was censored by the Academy's Report Review Committee, largely on the grounds that its publication might frighten Congress into cutting off all funds for biomedical research. At the very same time, an ad hoc committee of the Academy, chaired (if I remember rightly) by the eminent geneticist, Theodosius Dobzhansky, decided that the Academy should not commission a study—called for by Nobel laureate and Academy member, William Shockley—into the relation between race and intelligence. Nothing such a study might discover, the ad hoc committee argued, could, if known, possibly do anybody any good.

†The Free Press. 847 pp. $30.00.

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Though I was appalled at the cowardly censorship of our, in truth, very bland document, and though I was amused to see this double-barreled suppression of thought and inquiry by a collegium that had only scorn for the Church's suppression of Galileo, I remember being very impressed by the prudent and statesmanly report of Dobzhansky's committee, with whose conclusions I then agreed. It seemed to me then that a society founded on the self-evident truth of human equality—the equal dignity of each human being—had no business ranking racial groups, especially on the basis of alleged "scientifically measurable differences" in the powers that most make us human.

Times have changed. Race-consciousness is now rampant, no longer condemned but instead insisted upon by the loudest partisans of equality. For us, equality stands no longer as a founding faith in the rights of individuals, but as a fanatically sought-for sameness of result in the wealth, status, and power of groups. Blocking the march to equality, however, is a new, electronically transformed world that increasingly penalizes those who can't keep pace (and their children), despite the well-meaning, but unsuccessful, programs devised for their advancement by the "best and the brightest," those who have smartly risen to the top. Perhaps a case can now be made that we do indeed need to know the truth about intelligence, its heritability and malleability, and its relation to our social dilemmas, including those connected with race. This, indeed, is the view taken by Herrnstein and Murray. Before judging the wisdom of their effort, one should try to understand what their book says and means, in its own terms.

Science for the public good

Someone who has not read the book, but "knows" it only from the largely irresponsible things written and said about it, will be surprised to discover that *The Bell Curve* is *not* primarily about race. Neither does it teach that genes (fully) determine intelligence or that intelligence determines one's destiny. It remains loudly agnostic about whether, and to what extent, observed racial differences in IQ have any genetic basis. Also, its presentation of the scientific evidence is scrupulously separated from—and not driven by—its (limited) pub-

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lic-policy suggestions.

Herrnstein and Murray write with great clarity and unusual care. Immensely difficult and technical subjects are made accessible, often with the aid of marvelously apt examples or analogies. Premises are explicitly stated (for example, about which concept of intelligence they adopt and why), methods are explained, data are thoroughly, yet cautiously, interpreted, and arguments about their significance are presented explicitly and fully, yet with admirable recognition of the limits on what the data allow one to conclude. Evidence on all sides of controverted questions is always presented, and, in this reader's judgment, with remarkable evenhandedness and judiciousness. The tone throughout is sober, measured, concerned; there is nary a note of smugness or condescension. Whether its conclusions prove true or false, whether its interpretations are wrong or right, and, indeed, whether it should or should not have been published, *The Bell Curve* is an impressive work, written in the best academic (social) scientific spirit—animated entirely by the desire to know the scientific truth about these devilishly tricky and delicate subjects.

Well not quite entirely. The pursuit of the truth here is not simply disinterested. Herrnstein and Murray write also, if not in fact mainly, to address current disruptions of American social life and to rectify what they regard as the failure of social scientists, journalists, and politicians to diagnose or treat our social ills correctly:

> They examine changes in the economy, changes in the demographics, changes in the culture. They propose solutions founded on better education, on more and better jobs, on specific social interventions. But they ignore an underlying element that has shaped these changes: human intelligence—the way it varies within the American population and its crucially changing role in our destinies during the last half of the twentieth century. To try to come to grips with the nation's problems without understanding the role of intelligence is to see through a glass darkly indeed, to grope with symptoms instead of causes, to stumble into supposed remedies that have no chance of working.... [T]here can be no real progress in solving America's social problems when they are as misperceived as they are today.

The Bell Curve's science may not be contaminated by its public purpose, but its goal is not truth for its own sake but

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for the sake of social welfare and public good. Its publication even more than most scientific publication—always an act of making public—is an emphatically political act. This means that it must be judged by more than scientific criteria. Indeed, the authors invite us to judge their publication by the *good* that it might—in their view, will—bring: "What good can come of understanding the relationship of intelligence to social structure and public policy? Little good can come without it."

The song of the bell curve

What are the main teachings of this book? The big picture is the emerging social stratification of American society largely on the basis of intelligence, rather than inherited wealth or social class of origin. At the top, a cognitive elite, a meritocracy of the smart (not necessarily the wise or the good), is increasingly affluent, powerful, and more than everyone else free to enjoy the privileges and delights of our increasingly complex and technological society. Educated together in our most prestigious colleges and universities, engaged in occupations highly screened for IQ, intermarrying more and more only with one another, and living and working apart from the rest of society, and especially from contact with the people and problems of the growing underclass, this class is comfortably but dangerously isolated from the mainstream of American life.

In contrast, at the bottom, a cognitive underclass is mired in poverty and especially subject to all the social ills that clamor for public attention. In the most impressive part (II) of the book, the authors analyze the relation between cognitive class and social behavior and show that low IQ, even more than low socioeconomic status of one's family of origin, is highly correlated with comparatively high risks of trouble: poverty, dropping out of school, being unemployed or falling altogether out of the labor force, divorce, illegitimate births, welfare dependence, criminal activity, "malparenting," and having children who are also intellectually handicapped. These findings have nothing at all to do with race; the evidence comes from data collected only for non-Hispanic whites.

Later, viewing the American population as a whole, the authors also show that low IQ is especially prevalent among

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people who have these problems: people from the lowest 20 percent in intelligence (IQ less than 87) account for much or most of the poor (48 percent), the high school dropouts (67 percent), the jailed and imprisoned (62 percent), chronic welfare recipients (57 percent), mothers of illegitimate children (52 percent), mothers of children living in poverty (63 percent), and mothers of children with IQs under 81, the lowest decile (72 percent). The disintegrating American family, often blamed for many of these ills, has crumbled most for people in the lowest cognitive strata.

The data are sobering, the conclusions disquieting, but, to this point, no one could have reason to object. Most people know that intelligence goes a long way in today's world; most readers of this magazine are probably where they are because they were dealt good intellectual equipment, which was then esteemed and cultivated. Most people, if they thought about it, would suspect what Herrnstein and Murray have convincingly shown: very low cognitive ability is a severe handicap in a high-tech world, especially when mores are loosened and when the collapse of families and neighborhoods compel people increasingly to fend for themselves. *The Bell Curve* also provides evidence to support clearly what any savvy employer already knows: on the job, there is no known substitute for intelligence. A high IQ predicts proficiency of job performance better than any other tested variable, including level of education, interview results, or college grades.

The fuss begins because Herrnstein and Murray also discuss genetics and IQ, the chances of making children smarter by social intervention, and the explosive subject of intellectual differences among racial (they call them "ethnic") groups. They argue, against prevailing public orthodoxy but in accord with most scientific opinion, that general intelligence ("g") is, for individuals, highly heritable—somewhere between 40 percent and 80 percent; they opt for an estimate of 60 percent. (This means, of course, that a sizable portion of cognitive ability depends also on environment and education—who could think otherwise?) They disappoint those who hope to raise cognitive ability in the very dull by arguing that, short of adoption at birth, there is—at least for now—no evidence that altering environment can significantly raise a child's general intellec-

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tual ability. And they summarize findings regarding "ethnic groups" that show Asian Americans to be somewhat more intelligent and African Americans significantly less intelligent than non-Hispanic whites.

Because they believe that *individual* IQ is largely tied to genetic endowment, and because they do dare to *discuss* the question of genetics and race, they have been (falsely) accused of teaching that these *group* differences in intelligence are also genetic in origin. In fact, they clearly declare themselves agnostic on this issue. However, they rather astonishingly claim that it does not matter if it should turn out that the black-white IQ difference is indeed genetic, even largely or wholly so.

The final part (IV) of the book includes a chapter exposing the "dumbing down" of American education, in consequence of lowered standards, competing (noneducational) agendas, and a virtual neglect of the gifted; another that assesses the gains and losses of affirmative action in higher education, pointing out costs of the extensive "race norming" now practiced by elite universities in their admissions policies, including increased minority dropouts, low morale, and the diluted "worth" of their college degree; and a chapter that reviews consequences of affirmative action in the work place, showing that, controlling for IQ, blacks have been hired at higher rates than, and for comparable salaries as, whites (of equal IQ) since the late 1960s, and arguing against racial preference in hiring, on grounds both of fairness and benefits to productivity. The book's last chapter, "A Place for Everyone," presents policy recommendations for how we might live harmoniously, despite fundamental individual differences, in a world in which cognitive social partitioning will continue to increase.

Intelligence made simple

What to think of all this? My reaction is mixed. On the one hand, I am impressed by the data regarding the reality of cognitive stratification and the contributions low intelligence no doubt makes to our most pressing social problems. I am made sensible of the need for realistic expectations about how much social change in the "underclass" we can accomplish, say, by income redistribution or by pouring more money into

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schools. I am moved not only by the courage and clearmindedness of the authors, but even more by their passion for the public good, which, in fact, informs the entire work.

On the other hand, I am deeply saddened and troubled by the book: by its reminder of the unfairness of it all; by the implication that—if it speaks truly—there is little that hard work and the best will in the world can do to rescue many of my fellow citizens from a miserable life, which they not only suffer through no fault of their own but which they also will pass on to their children; and, worst of all, by the profound sense that all of this knowledge, because it is at best very partial knowledge, may not do us much good at all, indeed, may even make matters worse. Let me raise three kinds of misgivings. Each in its own way reveals a weakness in the social-scientific outlook and approach so well championed in this book.

First are questions about intelligence itself and the validity of attempts to isolate and measure it and to evaluate its role in life abstracted from other qualities of soul. Herrnstein and Murray partly address these questions (in the Introduction) and give practical (not psychological or philosophical) reasons why they adopt what they call the classical view of intelligence as a "structure"—"a general factor of cognitive ability on which human beings differ," most accurately measured by IQ tests expressly designed for this purpose. They claim, but make no attempt to show, that scores on these tests match what we mean, in ordinary speech, when we call someone intelligent or smart, dumb or stupid.

Sharing modern science's general aversion to questions of being or "essence," the authors care little for the question, "What *is* intelligence," contenting themselves with having what they regard as its quantitative measure. But this quantified measure is readily reified and comes to be taken for the thing itself. However useful, this abstracted and reductive measure is not itself the mysterious and multifunctional power (or powers) of mind or soul.

What, really, *is* intelligence? How is it related to the powers of calculation? deliberation? inference? deduction? discernment? intellectual intuition? cleverness? awareness? imagi-

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nation? aesthetic appreciation? inventiveness? shrewdness? insight? perspicacity? curiosity? reflection? inquiry? self-consciousness? conscience? moral judgment? Is intelligence as measured really the same as intelligence as lived? Are the intellectual gifts suitable for the higher mathematics related to the smarts necessary for prudent shopping or the moral intuition regarding right conduct? If so, why are so many people with high IQs "stupid" about human affairs? Why are people of average IQ often more sensible or reasonable—or better parents—than their "more gifted" peers? Should we really accept some numerical measure of some homogeneous "g" (general intelligence) as the common basis of the Apollonian gift of insight, the Promethean gifts of forethought and craftiness, and the Athenaean gift of sharp-eyed prudence?

Nearly 400 years ago Descartes invented the mathematical notion of quantity, usable everywhere, to make possible the grand project of modern science, ultimately useful for the conquest of nature. He asked readers to forget their interest in the being of things, for example, of color. What harm would there be, he asked, if we *represented* the *differences* among red, white, and blue as being *like* the differences of three geometrical figures? Plenty of harm: from there it was but a short intellectual step to reducing color colorlessly to wavelength, a move which does provide us predictive power and some control but only at the cost of a shrunken, abstracted, and distorted understanding of ourselves and the world in which we live.

Mysteriously, science's reductive approach works—both in general and here with IQ. Strangely, even though psychometry is deliberately indifferent to the *psyche* that it measures, its measurements do more or less accurately capture some abstractable features of intellect, whatever it is. Yet, the predictive power of knowing IQ for any individual is, as Herrnstein and Murray readily agree, very limited: everyone's fate turns on much more than measurable "cognitive ability." And IQ's statistical predictive power for populations is at once not very surprising and not very deep, given that the dependent variables with which IQ is correlated are likewise mainly quantitative and abstract.

The numbers correlate partly because the world has been

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reconceived in terms of our reductive modern science, of which the science of psychometrics is itself a part. In a world conceptually and technologically re-created on the basis of mathematical physics, whose truths are found by reducing quality to quantity and manipulating it through equations, and in a world run by people who reduce all thinking to problem-solving, small wonder it is that the problem-solving sort of intelligence confers some selective quantitative advantage, other things being equal.

Other things are not always equal. Indeed, as the authors point out, success in life—even success as reductively measured by social scientists—depends on many things, external and internal. Statistical correlation is not yet causation, certainly not in individuals, not even in groups. All things importantly human resist scientific simplification. Some aspects of intelligence may be assessed quantitatively, but what, for example, about character?

Character—the habits of the heart, the disposition of our loves and hates—surely counts a great deal for keeping a job, obeying the law, caring for one's children. Granted, a strong back and a willingness to work hard may not get one as far today as it once did. Granted, character may even depend somewhat upon intelligence: the ability to love and choose the right thing depends partly on the ability to discern it and largely on having been reared by people smart enough at least to provide adequate moral education. Still, one would have liked the authors to acknowledge the centrality of character as the cause of conduct and to confess the inability of quantitative social science to treat it properly. Where the authors do brush up against the topic, they are in over their heads. (See, for example, their silly suggestions about the connection between verbal skills or reading ethics books and acquiring "the habit of virtue.")

Naive public policy

Second, some questions about policy implications. Herrnstein and Murray offer recommendations to "deal with the twin realities that people differ in intelligence for reasons that are not their fault and that intelligence has a powerful bearing on how well people do in life." Their goal: to let each person—

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smart, dull, or in between—find a "valued place" in our society. Toward this end, they want us to cease treating individuals largely as members of ethnic groups, restore social functions to neighborhoods and municipalities, simplify the rules of life (largely) by reducing governmental interference, and make it "easier to live a virtuous life." For the latter, they make recommendations about crime and marriage: simplify the criminal justice system and return marriage to its formerly unique legal status. They want for everyone what they claim the cognitive elite now enjoys, life in community, "where being a good parent, a good neighbor, and a good friend will give their lives purpose and meaning."

The authors confess that their scientific analysis could just as well support opposite, egalitarian proposals, aimed at making up for unavoidable natural inequalities; their programmatic suggestions are based instead largely on personal philosophical preferences. I share these preferences and wish for the same goals, but I find the proposed remedies naive: much too weak for the problems, and, even then, very hard to come by.

The authors seem not to recognize that it takes more than the dismantling of the welfare state to restore neighborhoods, law-abidingness, civility, sexual self-restraint, strong marriages, devotion to children, and a valued place for all to a society in which the biggest rewards go for achievements of the mind rather than the heart. How can we hope to find a meaningful sense of place when the fabric of fundamental human relations is in tatters because of individualism, mobility, and the shallow artificiality of much of modern life? Rapid and life-transforming technological changes—especially in transportation and communication—have homogenized the country, obliterated the sense of natural place, weakened human ties, and undermined real civic participation (especially in our cities); people freed from mind-numbing toil are turning more and more to private affairs and mind-numbing amusements. Sexual license will be hard to reverse, given contraception, abortion, and the absence of public shame; home life will remain strained and voluntary charitable activities grossly understaffed if both husbands and wives are employed full-time. Real "places" are not constructed, they are bequeathed and inherited. The in-

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formation superhighway is not a neighborhood.

To be fair, Herrnstein and Murray set out mainly to diagnose our situation, not to remedy it. But they claim that nothing good can come without understanding the relationship of intelligence to our social structure and public policy. Perhaps so. But the good they hope to accomplish neither depends on their analysis of intelligence nor can that analysis show us how to fix the problems associated with cognitive stratification, itself no doubt only a symptom of the cultural crisis of advanced technological society. Public policy—like rapid technological change—can help destroy a culture; it has, to my knowledge, never yet re-created one.

An unwise social science

Finally, then, was it *wise* to publish this book, and especially its discussion of racial differences in IQ and their possible genetic origins? The authors, who clearly take delight in speaking frankly (says Murray: "for once, there would be no euphemisms, no self-censorship, no ducking of tough questions"), have in fact considered this question. They acknowledge the risks, but have their reasons for speaking up. First, they wish to challenge the unexamined assumptions of our social policy concerning race: a belief in the genetic cognitive equality among the races and the possibility of equalizing existing socioeconomic differences by social intervention. Further, by breaking the taboo against public speech regarding genes, intelligence, and race, they hope to correct wrong and dangerous racist private opinions, which, they allege, are now widely held and wildly different from our (hypocritical) public orthodoxy of equality.

Insufficiently appreciative that hypocrisy is the tribute vice pays to virtue, they seek the same (alleged) benefits that came from breaking the Victorian taboos against public chatter about sex (to which they compare ours about racial differences in IQ). Herrnstein and Murray want to let it all hang out: "Taboos breed not only ignorance but misinformation." A richer social science, seeking wisdom and not just statistical correlations, might understand that taboos—including the Victorian ones—are often the embodiments of reason and goodness. Our

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taboo about race, genes, and IQ seems to me profoundly wise.

Scientists Herrnstein and Murray deceive themselves into thinking that the world can treat intelligence "as just a noun, not an accolade." No one takes the term "stupid" as a neutral descriptive, much less as a compliment; as the authors themselves show repeatedly and emphatically, "smarts"—not virtue—are increasingly the prized coin of the realm. Also, almost no one is entirely able to keep statistically based stereotypes of a group from influencing their perceptions or expectations of its individual members, especially for those whose membership in the group is visible at a glance, knowable before anything else can be known about them. The authors claim, speaking, it seems, only for their highly rational selves, that it "matters little" whether the now-considerable black-white difference in IQ is environmental or genetic in origin: "We cannot think of a *legitimate argument* why any encounter between *individual* whites and blacks *need be* affected by the knowledge that an aggregate ethnic difference in measured intelligence is genetic instead of environmental" (my emphasis).

But life as lived is based not on "legitimate arguments" but on opinions and prejudices; and "need not be" rarely translates into "will not be." Precisely because most people do not—and probably cannot and will not—refrain from stereotypical thinking, and precisely because intelligence is so central to our humanity, it cannot be good for living together to go around broadcasting the low group IQ of blacks or Hispanics, or of Poles or Slovaks, for that matter. Few individuals (smart or dumb) belonging to such a group, "known" or "thought" to be intellectually inferior—even if through no fault of its own—are likely to live unencumbered by such opinions, once it becomes noised about and taken as truth.

Virtue and justice banished

Herrnstein and Murray are not responsible for our increasingly racialized political thought. On the contrary, it is much more their opponents—partisans of affirmative action; teachers of the ruling importance of race, class, and gender; preachers of the divisive sorts of multiculturalism and ethnic tribalism—who have betrayed the American ideal of the dignity of

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the individual, and, alas, so tragically close to the time at which that ideal was finally being made available to all people, *regardless* of race, creed, or color. But in Herrnstein and Murray's attempts to restore the focus on the individual, to replace the utopian drive for equality of outcomes with the dignified equality of opportunity, and to overcome tribalist thinking with a public-spirited concern for all our fellow citizens in the accepted presence of manifest inequality, they instead contribute—to be sure, unintentionally—to the very sort of poisonous racial thinking they oppose.

The excesses of affirmative action can and must be opposed on moral and political grounds—as unjust, harmful, and un-American—without trying to show that it can never work because of the intellectual inferiority of blacks. The authors of *The Bell Curve* seek to overcome racialistic thinking in the long run by requiring it in the short run. In this respect, they do exactly as their misguided opponents have done in demanding minority set-asides and quotas—and they should be willing to accept the blame for the consequences that follow.

As these are not cowardly men, I rather think they (now, only Murray) will be willing to take the brickbats—if they are in fact deserved. They have been scandalously and unfairly vilified and falsely accused of saying things they have not said. But it is part of wisdom to understand that one is partly responsible for how one is misunderstood. And no true student and friend of the American republic ought to be surprised at the uproar.

Murray, in a *Wall Street Journal* article responding to his critics, defends the decision to publish against the charge of irresponsibility:

> We said to ourselves that the question of irresponsibility must finally be determined by truth. As Mr. Herrnstein said shortly before his death: If what we say in *The Bell Curve* is not true, then there would be no responsible time to publish it. If what we say is true, there is no irresponsible time to publish it.

However admirable the sentiment, I can think of no more telling indictment of our value-neutral social science. Having banished virtue and justice from its field of study, it blindly confuses the factual with the good. A truer wisdom about

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human affairs knows when and how to speak, and when to keep silent. A high IQ and a Harvard education are clearly not enough.

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Religion's challenge to psychology

LEWIS M. ANDREWS

AMERICA'S therapy industry—by which I mean not only the licensed counselors in all mental-health specialties but also the psychiatric hospitals where many work and the graduate schools that train them—is currently in the throes of what is undoubtedly its single greatest economic upheaval since the beginnings of professional psychology just over 100 years ago.

Government agencies and insurance companies that once offered generous coverage for psychotherapy and related mental-health procedures are suddenly becoming tightfisted. Meanwhile, the traditional therapy hierarchy that puts the nation's 45,000 psychiatrists with M.D.s at the top of the pyramid—followed by the 144,000 psychologists with Ph.D.s, then the 484,000 masters-level social workers, the 154,000 school counselors, and, finally, the 189,000 "human-service workers" (including marriage and family counselors, employee-assistance professionals, and geriatric aides)—is collapsing with the advent of new treatment structures. At the same time, the insti-

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tutional domination of mental-health services by America's 1,237 psychiatric hospitals, 1,674 general hospitals with psychiatric units, and 2,232 outpatient clinics is being seriously challenged for the first time by none other than organized religion.

Although some journalists have hinted at aspects of this transformation, there is reason to believe that the cultural impact of what is happening to the economics of therapy will go beyond anything imagined by the popular press. Developments within the field of psychology have always had significant spill-over effects. The first behaviorists had a disproportionate influence on the philanthropic funding of psychological research in the early 1920s, ultimately shaping the humanities curriculum of every college and university in America. By dominating the therapeutic training of doctors, Freudians led an entire nation to focus on childhood sexuality. The success in the 1960s of social scientists in attracting federal dollars to subsidize the growth of their departments accelerated the development of Great Society programs. It is likely that current changes within the psychotherapy business will also have an impact on our culture beyond the simple material well-being of individual counselors and their affiliated institutions.

Economic downturn

To clearly understand the current plight of today's therapy industry, as well as its implications for the future of American intellectual life, we must first examine the spiraling medical costs of recent years. The majority of Americans receive their medical care under some kind of insurance policy. Since the policy's price tag represents simply the average cost of all illnesses covered, most people mistakenly assume that the sharp rise in premiums over the last decade reflects an inflationary trend that has been uniformly steep in all areas of medicine.

But what insurance companies and self-insuring corporations, who actually pay the bills rendered by therapy providers, began to notice in the late 1980s was that mental-health and related services were accounting for a disproportionately large percentage of their payables—up to 10 percent by 1990, according to the U.S. Department of Health and Human Services. Between 1987 and 1991, the cost per employee of the

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average company's mental-health bill actually doubled, according to the benefits consulting firm of Foster Higgins.

So dramatic were these increases that, by the middle of 1990, Texas Attorney General Dan Morales initiated the first of many state investigations across the country. These revealed a widespread pattern of abuse among the nation's therapists and mental-health hospitals—all aimed at milking insurance policies for the maximum possible payoff. The predominant thrust of this activity, according to the testimony of Ralph Roath, formerly Patient Intake Director at Twin Lakes Hospital in Denton, Texas, was "to put the head in the bed and keep it there."

In early 1991, insurers finally began to get a grip on exploding mental-health costs by reducing the number of days they would cover for psychiatric hospitalizations and by insisting on a greater role in evaluating the progress of each patient. They also set limits on reimbursements for private and outpatient counseling, even dictating some forms of treatment over others on the grounds that certain therapies were needlessly "time consuming" and "empirically untested."

Large insurance firms, such as Cigna and Prudential, began experimenting with the use of databases that compared the outcomes of various treatments for a specific emotional illness, like depression, and then instructed providers to use only those approaches that had proved themselves statistically. At the same time, Chrysler and other corporate purchasers of group insurance began funneling employees into "managed-care" networks, which encouraged patients to pick from a limited number of therapists who had agreed in advance to work at discounted rates.

The immediate effect of these new policies was a drastic reversal in the viability and expansion of mental-health facilities nationwide. The operating profit for the psychiatric division of National Medical Enterprises collapsed to just $3 million in 1993, from $234 million in 1991. Charter Medical of Macon, Georgia, one of Wall Street's hottest growth stocks during the 1980s, was in Chapter 11 bankruptcy proceedings by the summer of 1992, while California-based Community Psychiatric Centers, another national chain of mental-health hospitals, saw its share price plunge from a high of $40 in

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early 1991 to less than $5 just a year later.

Alarm naturally spread among psychiatrists, psychologists, and other mental-health workers who, for the first time in the hundred-year history of professional counseling, saw their employment opportunities suddenly narrowing, especially in institutional settings. By the beginning of 1993, according to Census Bureau figures, the average number of days for a psychiatric hospitalization had declined to a quarter of what it had been 20 years before. And the National Association of Psychiatric Health Systems, an industry trade organization, was reporting that occupancy rates had fallen to an average of 58 percent in 1993, down 10 percentage points from 1991.

In states such as California and Florida, reported Melinda Henneberger in the *New York Times*, managed-care networks had reduced the average private therapist's income by nearly 50 percent, forcing many to take early retirement or start over in new careers. Even in New York State—home to 20 percent of the nation's therapists in 1993 and to an average mental-health expenditure of $330 per resident, according to Barry Brauth of the state's Office of Mental Health—managed-care companies would pay only 60 percent of a therapist's stated fee.

If there was any consolation for mental-health professionals, it was the knowledge that government funding for drug and alcohol recovery programs would continue to flow from local, state, and federal sources. Moreover, many therapists believed they would be able to switch into substance-abuse counseling as a way to make up for revenue lost from the decrease in their conventional-therapy practice. There was also the hope that the election of a Democratic president promoting universal health care with a guarantee of mental-health benefits for every American would also assure every licensed therapist a baseline income.

It is only in the last year or so that professional therapists have finally begun to face the radical and, in all likelihood, permanent reversal in their collective economic fortunes. Many psychiatrists, psychologists, and social workers have indeed made the transition to substance-abuse counseling. However, many others are discovering that the jobs they thought they could walk into with relative ease have already been taken by

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recovering alcoholics and drug addicts, who, studies show, are just as capable of treating active substance abusers as highly educated professionals, and at a far lower cost.

Therapists have also looked on helplessly as the initial public enthusiasm for what President Clinton called "a broad package of benefits, guaranteed to every American" has withered. Indeed, by the end of 1994, the country had elected its first Republican Congress in 40 years, ending any possibility of a significant federal subsidy for mental-health benefits in the foreseeable future. According to a year-end report by the national accounting firm of KPMG Peat Marwick, 1994 was also the first year in which a majority of Americans insured through private companies were enrolled in some kind of managed-care plan that strictly limited mental-health coverage.

Religious revival

As if all these threats to its economic security were not enough to worry about, the therapy industry faces competition from, of all places, the one institution it thought it had long ago routed (at least intellectually)—namely, organized religion. Moreover, some of the most enthusiastic advocates of spiritually oriented counseling are medical doctors and insurance officials who believe that religious faith helps many patients cope with life-threatening illnesses. Local churches and synagogues increasingly sponsor a variety of health-care programs for their communities—a movement that has come to be called "congregation-based health care." Some churches, for example, hire nurses to provide long-term support to homebound members of their congregations recovering from serious illnesses; others focus on preventive medicine, geriatric services, child care, and health services for the working poor.

The most dramatic development has been the explosive growth in the number of congregation-based counseling centers. Based on a model first developed in the mid-1950s by psychiatrist Smiley Blanton and popular author-minister Norman Vincent Peale, these centers seek to establish a church- or synagogue-affiliated group practice that adheres to the same state licensing standards as any group of secular psychotherapists but still remains supportive of a client's particular religious and spiritual beliefs.

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A typical example of these congregation-based mental-health centers is the Frazer Counseling Clinic of Montgomery, Alabama. Set up just eight years ago by local psychologist Don Hill, as part of the Frazer Memorial United Methodist Church, its founding mission is to provide therapeutic services to a variety of people who, for either economic or religious reasons, might not be able to take advantage of conventional counseling. Today, the clinic employs four licensed therapists and draws clients from more than 20 local churches, as well as hundreds who attend no church at all.

Even the original center set up by Blanton and Peale at New York City's Marble Collegiate Church has remained true to the model of congregation-based counseling, in spite of the growing demand for its services over the years. Today, there are nine Blanton-Peale Counseling Centers, each operating as part of a different church in the metropolitan area and providing a total of more than 22,000 hours of counseling to clients in Manhattan, Staten Island, Queens, Brooklyn, and Nassau, as well as parts of New Jersey.

Although it is difficult to know how large this congregation-based counseling movement has actually become, it is significant that, in November of 1992, nearly 2,500 self-declared "religious therapists" gathered at a national conference in Atlanta to celebrate a vocation that hardly existed just a few years before. Other indicators include the rapid growth of organizations such as the Chicago-based American Association of Christian Counselors—up from 751 members in the summer of 1991 to over 14,000 in 1995—and the increasing number of hospital chains that advertise an explicitly religious approach to therapy, such as Rapha, New Life, Minirth-Meier, and Nachat Ruach.

There are also a number of religious schools that offer formal degree programs in a wide range of mental-health specialties. For example, the Fuller Theological Seminary in Pasadena, California, grants a Ph.D. in clinical psychology, fully accredited by the American Psychological Association, while the Southern Baptist Theological Seminary in Louisville, Kentucky, offers a complete on-campus program leading to a Masters of Social Work. (Next spring, the Carver School at Southern Baptist will also begin publishing an academic counseling

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periodical, the *Journal of Church Social Work*.) The Pastoral Care Department at Iona College in New Rochelle, New York, runs a three-year program that qualifies graduates to become licensed marriage and family counselors in most states. Other church-affiliated schools offering therapy degrees include Wheaton College in Wheaton, Illinois, Trinity College in Deerfield, Illinois, and Biola University in Southern California.

On the surface, the growth of church-sponsored mental-health centers might seem a boon for today's hard-pressed therapists. For unlike pastoral-counseling services traditionally offered by local parishes and synagogues, the modern congregation-based counseling center strives to be completely professional, most, for example, hiring state-licensed therapists.

However, they rarely adhere to the conventional practice of elevating a professional with six years of graduate training over someone who has had only two or three. A church may decide to hire a licensed professional to maintain its counseling center's credibility. Yet, from a theological perspective, a marriage and family therapist with two years of graduate education is just as good as a clinical psychologist steeped in psychoanalysis, behaviorism, or some other "value-free" science—better, in fact, since he or she is probably more open to incorporating spiritual concepts into the practice of therapy. And since it costs much less to hire an M.A. or M.S.W. than a Ph.D. or M.D., more savings can be passed on to the consumer.

Faith healing

How exactly will the decline of conventional psychotherapy and the parallel rise of religiously supported alternatives impact the broader culture? Certainly, much depends on what happens ideologically within the growing community of religiously oriented therapists. Already there is a lively debate as to whether congregation-based counseling should rely exclusively on religious teachings or embrace a broader, though still spiritual, outlook that would be more appealing to a wider patient population.

On the one hand are the "hard liners," like Christian psychologist James Dobson, founder of Focus on the Family, who

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believe that all church counseling centers should have a strong Biblical focus. "If I had to boil everything I have to say ... down to one thing," he recently told a gathering of religious mental-health professionals, "it would be to be followers of Jesus Christ first, and mental-health professionals second. And keep it in that order."

Within the Jewish community as well, there is a conservative strain, which seeks to equate effective counseling with strict adherence to religious observances. Rabbi Peter Knobel, for example, sponsors a weekly healing service at the Free Synagogue in Evanston, Illinois, which, for all its novelty, he calls "very traditional." There is also a Center for the Study of Psychology and Judaism in Ottawa, Canada, which explores the therapeutic lessons of the Torah and publishes a quarterly, the *Study of Psychology and Judaism*.

But there is also a powerful movement seeking to define a more universal therapy based on principles common to all the major religions—e.g., a belief in one God, as well as the importance of such universally revered values as honesty, tolerance, and humility. Psychologist Allen Bergin of Brigham Young University argues that helping emotionally troubled people see the wisdom in certain moral precepts common to all faith traditions is the key to resolving their difficulties.

Similarly, the Park Ridge Center in Chicago has published a series of books on health and medicine in the history of Catholicism, Protestantism, Judaism, Islam, and Hinduism, a primary goal being to identify and clarify the common therapeutic values at the heart of all religious instruction. The Department of Psychiatry at the University of Louisville has set up an institute under the direction of James Hyde, a theologian trained in psychology, to study empirically the connection between universal spiritual values and emotional health and to apply its findings to the fields of medicine, nursing, and social work.

This interfaith approach has received considerable support from a variety of funding sources, not always identified with the same causes, including the Carter Center at Emory University, the Lilly Foundation, Wheatridge Ministries, and the Robert Wood Johnson Foundation. Even that bastion of therapeutic materialism, the *Journal of the American Psychological*

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Association, has published articles such as "A Constructive Relationship for Religion With the Science and Profession of Psychology," by Stanton Jones of the Wheaton College Psychology Department. Bergin, a onetime behaviorist who still remembers being harshly criticized by his colleagues when he began using the "G-word" (God) at professional gatherings years ago, was the recipient of the Distinguished Professional Contributions award at the ninety-eighth annual convention of the American Psychological Association.

Of course, to the staff psychiatrist who may lose her job because more insurance companies are refusing to cover long-term hospitalization, or to the psychologist in private practice who sees his patients going down the street to a less-expensive church clinic, the philosophical differences separating a religious fundamentalist from an interfaith counselor may seem like a mere technical point. If there is any intellectual issue at stake for the conventional secular therapists, it is their growing lament that economic and religious forces may be combining to undercut certain schools of thought, especially psychoanalytic and other in-depth approaches, which they believe have made a positive and dynamic contribution to American culture. "I worry especially," says Jeremy Lazarus, chairman of the American Psychiatric Association's Committee on Managed Care, "that we may have lost our ability to help those people in intellectual, artistic, and other creative fields."

Karen Stone, a Long Island psychologist who co-chairs the Coalition of Mental Health Professionals and Consumers, a group opposed to managed care for mental health, expressed the fear of her colleagues when she recently told a *New York Times* reporter that current trends are "destroying this field." She went on to add parenthetically that "nobody wants their kid to be a psychologist any more."

Psychology's roots

The present upheaval in mental health represents in many ways a revisiting of psychology's past, especially that point when it was most vital: its formative period at the turn of the last century. We have become so accustomed in recent times to thinking of psychotherapy as a "value-free" profession, hostile to the precepts of organized religion, that we forget that

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the first self-described psychotherapists were products of America's moral idealism.

Two decades before Americans had ever heard the name Sigmund Freud, a Boston internist named Richard Cabot created America's first hospital-based counseling and social-work center at Massachusetts General Hospital. As Cabot observed in his 1908 book, *Psychotherapy and Its Relation to Religion*, psychotherapy is first and foremost a "spiritual enterprise." The "essence and center" of mental health, he argued, was maintaining one's "character under adversity." As he approached retirement in the 1930s, Cabot remarked sadly that "one of the great blunders of social work ... is that [now] there is no religion in it."

Just as today, many of Cabot's contemporaries were divided between their desire for an explicitly religious therapy and the quest for a more interfaith approach. The scriptural approach of Mary Baker Eddy's Christian Science flourished, but so did the ecumenical moralism of Harvard's first professor of psychology, William James. Thus, the decay of the economic structures that have supported the secular psychotherapy business signals a return to psychology's original challenge of applying eternal wisdom to the problems of emotional distress.

The real purpose of therapy, Cabot had argued, was to help people develop the integrity and inner resources that would "favor the entrance of God's powers for the [immeasurable] benefits of the individual." The prospect of a therapeutic revolution, which promises to resurrect such an outlook, is hardly cause for lament. For, wherever we turn today, Americans seem torn between the desire to return to a shared set of moral values on the one hand, and the fear that any consensus might lead to narrow-minded conformity on the other. If the current upheaval in therapy creates a culture that once again sees certain universal, transcendent truths as necessary for the refinement of genuine, personal independence, can we not say that psychology has, by returning to its roots, progressed forward?

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The decline of the American Mafia

PETER REUTER

THE American Mafia emerged during Prohibition as the wealthier and more violent successor to local city gangs involved in prostitution and gambling. It is thus a contemporary of the Soviet Union, another long-standing problem for the United States government. Coincidentally, the Mafia and Soviet Union have ceased to be significant strategic adversaries at almost the same time. The Mafia is almost extinguished now as a major actor in the United States' criminal world. And, to extend the comparison with the Soviet Union perhaps beyond its fair limits, the Mafia's decline is the result of both its conservatism and of federal government actions.

Initially, the American Mafia was a prominent supplier of bootlegged liquor. That required good connections with the local police department and political machines. Paying off the local beat cop provided a speakeasy, with its conspicuous and regular flow of traffic, little effective protection. Instead, it was necessary to guard against any cop who might be on that

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beat; the efficient solution was buying the whole department, if it was for sale. In many cities it was. Frequently, that also meant connections with urban political machines. While Al Capone's control of Chicago (though some scholars question Capone's Mafia membership) in the 1920s is the most notorious instance, almost 50 years later the Mayor of Newark, New Jersey, Hugh Addonizio, retained strong connections to the local Mafia family. Elliot Ness and the federal revenuers, frequently less honest than legend, were a nuisance but not a major one.

At the same time, the Mafia acquired control of many unions, largely through direct intimidation of members. By 1929, when John Landesco did his classic study of organized crime in Chicago, he could already list a dozen local industries that the Mafia dominated through the unions. Prices were fixed and/or territories were allocated, with the threat of union strikes or picketing of customers as the enforcement mechanism. The Depression, which created a demand for cartel-organizing services later met by various New Deal agencies, such as the Reconstruction Financing Administration, added a few more industries (e.g., fur manufacturing) to the Mafia list, particularly in New York.

By the 1960s, the Mafia had mostly shifted from direct provision of illegal services, like bookmaking and loansharking, to selling services to bookmakers, loansharks, and other criminal entrepreneurs. The organization's reputation for being able to deliver on threats was good enough that it could, in effect, sell these entrepreneurs contract insurance and dispute-settlement services. A bookmaker could insure himself against extortion by other gangsters or customer welching by making regular payments to some Mafioso. The organizational reputation, painstakingly and bloodily acquired earlier, was now the principal asset.

Losing to the competition

The evidence of the Mafia's decline is partly of the "dog didn't bark" variety. A Senate committee has a hearing on international fraud and organized crime, and the American Mafia goes unmentioned. The Department of Justice lists its principal targets for drug enforcement, and Mafia leaders don't

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make the cut. The New York City Police Department has yet another major corruption scandal, and none of the events involve the Mafia. A major numbers banker in New York, "Spanish Raymond" Marquez, who paid 5 percent of his profits to the Mafia in the 1960s, now pays only $300 per week.

There are a few more direct indicia as well. At least one family, based in Cleveland, has effectively disbanded. The *New York Times*, long the newspaper of record for Mafia events, now lists the membership of the five major New York families as only 1,200, down from 3,000 in the early 1970s. The DeCavalcante family of New Jersey, admittedly a weaker family even then, now has only 10 members, scarcely enough to fill a good-sized dining table, let alone an organization chart of the type so dramatically displayed by the FBI at numerous Senate hearings.

The Mafia has failed to maintain control of the New York heroin market and has been a marginal player in the cocaine business everywhere. Mexican-source heroin became available when the heroin market first expanded in the early 1970s, and the Mafia was never able to prevent its distribution in New York City, the home of perhaps one-third of the nation's heroin addicts. Its earlier control of the market had apparently rested on its domination of the New York docks, through the longshoremen's union as well as its connections with southern European processors. Mexican imports evaded that bottleneck. By the late 1980s, the traditional circuitous route for Southeast Asian heroin, through Sicily, southern Italy, or France, had primarily been replaced by direct importation, via the West coast, by Chinese and Vietnamese entrepreneurs. The Mafia proved helpless to deal with any of these incursions on its traditional territories.

Asian drug distributors have major advantages as heroin importers and domestic wholesalers. In the source countries for heroin, they can more cheaply ascertain the credibility and capacities of producers and exporters, as well as the corruptibility of local officials and transportation executives. Chinese gangs are better partners for Kun Sa, the long-standing leader in the Burmese/Thai opium trade, historically connected with remnants of the Kuo Min Tang army from pre-1949 China.

In the United States, these gangs have better natural cover.

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Even creative and entrepreneurial drug-enforcement organizations have had difficulty developing informants and intelligence about Asian distributors. Few agents speak the relevant languages, and even fewer are of Asian origin. It is difficult to blend into the community, which, reflecting its recent immigration and cultural distinctiveness, is generally distrustful of police agencies.

In contrast, the Mafia is familiar territory to enforcement agencies, with its membership and affiliate lists updated as often at FBI headquarters as at John Gotti's Ravenite Social Club hangout. Indeed, there have been occasions in which, as was true for the U.S. Communist Party in the 1950s, FBI undercover agents seem to be as significant in some families as were the members themselves. The communities in which the Mafia recruits and operates are well known to police and provide comfortable terrain for undercover operations; language is not much of a problem anymore.

The Mafia's failure to play a role in the cocaine market is particularly striking. Most reasonable estimates suggest that this constitutes the largest single illegal market, in terms of gross sales, in recent times and perhaps ever. Credible estimates of U.S. revenues are approximately $40 billion, with as much as $10 billion going to higher-level distributors. No list of the major players has ever included any senior Mafiosi. The failure of the Mafia to participate directly in this market is partly explained by the very high legal risks associated with drug trafficking (a reason offered for the often-broken rule, immortalized in the movie *The Godfather*, for staying away from heroin), but more interesting is the Mafia's failure to serve as the source of dispute-settlement, enforcement, or financing services.

Several factors may explain the Mafia's inability to provide services to cocaine dealers. Colombian drug-dealing organizations have developed their own general reputation for violence. Indeed, the Colombians are known for their unwillingness to follow even the moderately restrictive rules of Mafia murders, e.g., that wives and children are exempt. That probably reflects a shorter planning horizon (the leaders will go back to Colombia once rich) and a belief that the criminal-justice system will not punish them. The historical experience

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in Colombia itself since 1950 could account for that; the criminal-justice system there has been highly vulnerable to intimidation and corruption, and Colombia has experienced extraordinary levels of political and other violence over the last 40 years.

The Mafia has also suffered a major loss from its racketeering activities in legal markets. The election of a Teamsters reform slate, headed by Ron Carey, capped a decades-long battle with the U.S. Department of Justice. During that time, four Teamster presidents (Dave Beck, Jimmy Hoffa, Roy Williams, and Jackie Presser) were indicted and/or convicted of corrupt activities in connection with the Mafia, particularly the Chicago and Kansas City families. The Mafia's long-standing role in Las Vegas casinos, originally arising from the pariah-like nature of the industry itself, had come to center on its ability to direct the Central States Teamsters pension funds to compliant casino operators. The shift to trusteeships of that fund, again after a remarkably long battle with the Justice Department, greatly reduced the capital available to the Mafia.

Deregulation of the trucking industry, which curtailed the bargaining power of the Teamsters, also played a major role in lowering the value of racketeer control of the union. Trucking companies now had to compete with each other, as well as with other modes of transport, and could no longer pass on wage increases in regulated prices.

The most poignant indicator of decline is evidenced by recent court pleadings. Twelve Philadelphia Mafiosi have asked for public-defender representation, and prosecutors believe that they may indeed be poor enough to justify the request. Even the bar specializing in defense of Mafiosi has apparently hit hard times: "Lawyers who once made a steady diet of this type of work are having to diversify," said a prominent local defense lawyer.

Sources of decline

Some have suggested that the decline is largely the result of the "Americanization" of the Mafia—the demise of old values of loyalty to the fictive family and the increasing greed and self-centeredness of members. A less colorful, but more

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plausible, explanation may be found in a combination of three factors.

The altered structure of urban politics and policing. As already stated, the principal original asset of the Mafia, built during the Prohibition era, was its connection to urban political machines. Mayors in Boston, Kansas City, New York, and Philadelphia were all credibly associated with their local Mafia families between 1950 and 1980. Those connections helped the Mafia develop property rights to centralized police corruption. As Thomas Schelling argued in these pages 28 years ago, the Mafia's ability to control illegal markets may have rested largely on its ability to use the monopoly power of the police.* The Mafia was, in effect, the collector for corrupt politicians and police, with the limits of the franchise dictated by political resistance in the populace.

By 1970, urban machines were largely gone; Chicago was an important exception into the 1980s. Cities are now mostly governed by much broader coalitions, with strong federal involvement in local government financing. Local corruption, the original justification for passage in 1970 of the Organized Crime Control Act, is now much less systemic. The flight of white ethnic communities to the suburbs and the growth of strong urban black political organizations has also contributed to the decline. Though *The Godfather* movies depicted corrupt, whiskey-guzzling Irish police overcoming their contempt for wine-sloshing Sicilians and making deals with the Mafia, the traditional relationship between blacks and the Mafia has not encouraged the development of trust. For a long time, the Mafia pushed around black gambling operators, and the memory remains.

Local police agencies have become more professional, and the growth of large federal law-enforcement agencies, with concurrent jurisdiction and strong interest in making corruption cases, has inhibited the development of long-term corrupt relationships between Mafiosi and police. Before 1960, the local police effectively had a monopoly of law enforcement aimed at illegal markets; paying off the Miami Police Department was enough to provide total protection of bookmaking there in the 1950s. Federal and state agencies might have

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jurisdiction, for example, under the Harrison Act (drugs) or the Mann Act (prostitution), but these agencies were small and timid. The famous Harry Anslinger, an aggressive proselytizer for tough drug enforcement and the head of the predecessor to DEA, had assembled a force of no more than 300 agents when he retired in 1962.

Now, the local police can sell, at best, very partial protection, since state and federal agencies can all make cases against loansharks, drug dealers, or extortionists. To make matters worse for would-be sellers of local protective services, offering up your local protector is one of the few ways for criminals to get relief from long federal sentences. The market for local police corruption has certainly not disappeared, but it is much less systemic than in previous decades. What the recent Mollen Commission inquiry in New York City uncovered was a group of entrepreneurial police who stole drugs from dealers when they had the chance but then had to sell the stuff themselves. There was no criminal organization able and willing to take advantage of their corruption to develop control of some area or market.

Legal eagles and stumbling felons

Better federal enforcement. The FBI got out of pretentious pinstripes and into badly cut leisure suits in the late 1970s. Long-term undercover investigations, which Hoover had always rejected because of the difficulty of controlling the agents, became frequent. One of the first (UniRac, for "union racketeering") snared Anthony Scotto, a highly visible figure in the waterfront industry with close ties to the New York State political system and, as it turned out, a member in good standing of the Gambino family; that membership was scarcely surprising since he had married the daughter of Anthony Anastasia, of Murder, Inc., fame.

Federal prosecutors became much more sophisticated in their use of the Racketeer Influenced and Corrupt Organizations (RICO) and the Continuing Criminal Enterprise (CCE) statutes. Instead of convicting dons for running gambling enterprises, which was the outcome of many investigations in the early 1970s, RICO allowed them to bring cases with more significant and substantive crimes. John Gotti, the putative

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Godfather, was sentenced for his involvement in a homicide. The list of charges on which the heads of the five New York families were convicted in 1986 (the "Commission" case, in which, for the first time, the defendants admitted that the Mafia existed and was directed by a commission of the leaders) included three murders.

The federal judiciary, with guidelines in hand, delivered long sentences. For example, taking the *Times* listing as definitive, each of the leaders of the five families in New York in 1985 has received a sentence of at least 15 years; most of them and their principal deputies are in prison for life sentences without parole.

The price of loyalty, the much-vaunted "omerta," has thus become a lot higher. Members who might serve three years rather than inform changed their minds when 15-year terms became common. John Gotti is serving a life sentence because Salvatore Gravano, his longtime deputy and an admitted participant in 19 murders, chose to testify and turn an expected life sentence into a more reasonable five years. The federal government now reports over 100 Mafiosi in its witness protection program, compared to just a handful 10 years ago.

Not surprisingly, the increasing incidence of informants has begun to destroy the families from within; by early 1993, 11 Lucchese family members had been killed in an internal struggle. As Ronald Goldstock, longtime director of the New York State Organized Crime Task Force, commented in 1993: "The fate of anyone who assumes a leadership position in a [Mafia] family is a life prison sentence or assassination by a rival."

Incompetence. The Mafia has continued to recruit from among uneducated, tough felons and requires that they commit serious and brutal crimes to gain admission. This is not a very effective method for finding the best and the brightest of criminal talent, particularly when the shrinking pool of young Italian-immigrant labor has much better legitimate opportunities than in the past. Whereas in the period from 1900 to 1909 over one million Italian males under the age of 45 migrated to the United States, for the 1960s the figure was only 80,000.

Inevitably, some older leaders lost their edge. Mark Haller,

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the leading historian of American organized crime, reports that Harry Riccibone, a senior member of the Bruno group, was accused by one of his associates of turning into a "philanthropist" because of his unwillingness to act aggressively against his debtors. The current leader of the Genovese family, Vincent Gigante, may be mentally impaired, though some maintain that this is a ruse on his part to ensure that he cannot be tried.

The leaders may be decisive, they may be shrewd at determining when to use force, but they are not strategic in their thinking. Colombian drug distributors are less sophisticated than suggested by highly stylized accounts, such as novelist Tom Clancy's *Clear and Present Danger*, but they do seem to have acquired a few contemporary business practices, particularly with respect to financial services. The American Mafia languishes in suspicion of such sophistication, with nary a computer in sight.

The future of organized crime

This is not to say that organized crime has disappeared from American cities. New ethnic gangs, mostly from East Asia, have become wealthy through their control of large-scale illicit drug-distribution systems. Chinese and Vietnamese importers have come to dominate the importation of drugs into New York and Los Angeles; they are sufficiently competent at these activities that the price of imported heroin has simply collapsed, from $2,000 per gram in 1980 to less than $500 per gram in 1992.

They are also effective extortionists of their own communities. Chinese gangs have long been able to intimidate small businesses in traditional Chinatowns; the expansion of these communities, with new migration and economic mobility, does not seem to have reduced that capacity. Like their predecessor migrant populations, Asians have been unwilling to go to alien police to deal with indigenous intimidation. Police departments have made only modest recruiting efforts in Asian communities, with little success.

Yet, these gangs have not been able to diversify, as the Mafia did, into control of mainstream political and social institutions outside of those communities. The leading Chinese

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triads lack the name recognition of Mafia families in the non-Asian community. Asians are only just now producing their first generation of prominent local politicians, reflecting, in many cases, the lack of an active political tradition in their own nations. The path to success of the Mafia in American urban politics does not seem to be the path that the Asian gangs will follow.

But will the Colombian gangs, fed by the vast revenues from cocaine trafficking, take on Mafia-like capabilities? So far, they have not exhibited the same entrepreneurial capacities as their 1920s counterparts and have not branched out into other activities in this country. This contrasts with their supplier organizations in Colombia, which have greatly broadened the base of their legal and illegal activities. The critical difference is probably the role of systemic corruption. In Colombia, their success has been built on the purchase of broad political influence, in addition to the intimidation of law enforcement. That influence permitted the Medellin principals to invest with impunity in agricultural land; the scenes of the baronial country homes of smugglers in *Clear and Present Danger* are allegedly close to the truth.

In this country, that same kind of systemic protection has not been available. The leaders have not built connections to political machines or developed any other institutional base for expanded operations. Gambling operators and bootleggers in earlier eras were public figures, with broad reputations that were important assets in many phases of their business. Drug dealers, in contrast, are rewarded for discretion. Moreover, major drug dealers do not need to have traditional retail businesses, but only have to make very occasional deals in varying locations; consequently, they do not need the same kind of long-term police protection.

The reduced power of unions, a concomitant of the decline in American manufacturing, also makes it difficult for new groups to acquire broad criminal powers. Thus, the list of racketeer-dominated industries has not expanded in the last 65 years. Indeed, I would argue that it was a list of low-technology industries with poorly educated workforces that have mostly disappeared.

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Bring back the Godfather?

A nostalgia for the Mafia has already emerged in this country. It is associated with a remembrance of orderly illegal markets, when bootleggers and bookmakers only shot each other and understood the dangers of killing the innocent. Alan Block, a Pennsylvania State University historian, estimates that only about 190 gangland murders occurred in New York during the 1930s, a mere bagatelle when compared with the hundreds generated annually by drug markets through the 1980s and 1990s. Unless we want to reinstall systemic, local police corruption and have police intimately involved in the regulation of the business, the Mafia would not be able to do much about the retailing end, where almost all the violence occurs.

Another component of the nostalgia is for the simplicity of having one monolithic enemy, particularly one whose leaders often displayed a certain panache and whose lineages were well known. Alas, to conclude with the Soviet analogy, we will now have to live with the more complicated world of many less well-known gangs. The FBI, like the CIA, must develop the capacity to track the activities of lots of groups, many as meaningless to the American public as the leaders of Azerbaijan. We may be better off dealing with a foe less capable of undermining government, but we will inevitably pay less attention to the struggle, and the agencies themselves will miss the public attention that goes with catching stars.

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Overcoming Posner

JAY P. LEFKOWITZ

IN the post-Bork era, when a Supreme Court nominee's strength is often measured by the dearth of a "paper trail"—at least regarding sensitive subjects like abortion, homosexuality, racial quotas, and pornography—one might expect the Chief Judge of the United States Court of Appeals for the Seventh Circuit to be a circumspect writer. Not Richard A. Posner, the current occupant of that seat. Much to his credit, he is the most prolific writer within the federal judiciary. He is also one of the most influential, as well as controversial, scholars in American law today.

Overcoming Law† is Posner's twenty-first book about the law. He is also the author of dozens of law-review articles and more than 1,200 judicial opinions, and has been an active member of the faculty of the University of Chicago Law School for 26 years. To say that Posner's writings, both on and off the bench, have transformed the law is only to give credit where it is due. The Supreme Court has cited Judge Posner by name more than 20 times; his colleagues on the federal courts of appeals have done so in approximately 200 cases; and his interdisciplinary, economic approach to the law has created a new subject for instruction in law schools as well as a new basis for jurisprudence.

Although Posner is perhaps best known as a founder and leader of the law-and-economics movement that took root at the University of Chicago Law School in the 1970s, which in turn gave rise to a revival of conservative jurisprudence, his place on the legal spectrum is hard to pinpoint. In the early 1980s, when President Reagan appointed him to the bench, he was generally considered to be a fellow traveler of Robert Bork, Antonin Scalia, Laurence Silberman, Frank Easterbrook, and Ralph Winter, all heroes of the then-nascent Federalist

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Society. Today, stemming in large part from his sharp critique of Robert Bork's theory of constitutional interpretation, Posner is seen by many on the judicial right as either a legal maverick or, less charitably, a proponent of judicial activism and moral relativism.

OVERCOMING Law, nearly 600 pages long, is largely a compendium of prior law-review articles and book reviews (many of which have been substantially revised) but features six new essays that comprise more than a quarter of the book. The subject matter is eclectic: The breadth of Posner's interests is formidable, even awe-inspiring. His discourses range from the classical philosophy of Plato, Socrates, and Aristotle to the utilitarianism of Jeremy Bentham, the pragmatism of John Dewey, the liberalism of John Stuart Mill, and the economics of Nobel laureate Ronald Coase. Included, too, are reviews of Tom Wolfe's *Bonfire of the Vanities* and E.M. Forster's *Howard's End*, discussions of the authentic-performance movement in classical music, and of the legal cultures of medieval Iceland and the Third Reich, as well as devastating critiques of some of Posner's colleagues in the legal community, including Catherine MacKinnon, Patricia Williams, and Duncan Kennedy.

Overcoming Law is an important book, and not merely because its author is chief judge of one of the most important tribunals in the United States. Posner demonstrates the great reach of the law and provides his readers with glimpses of its impact upon nearly all human endeavors, ranging from the interpersonal (sexuality, marriage, and divorce) to the societal (economics, religion, labor, and employment). He leaves no doubt that law is the great equalizer in a democratic society: It serves the interests of the majority yet protects the rights of minorities. Given this inevitable tension, aptly described by Posner, between classical liberalism and representative democracy, a better understanding of the law is essential for all Americans, not only judges and lawyers. And while Posner has written about a complex subject, *Overcoming Law* is usually very accessible to non-lawyers.

Despite these strengths, however, Posner's latest book is not without its flaws. Principal among them is that the unifying theory Posner constructs for evaluating and resolving legal issues—his version of pragmatism, which eschews formalism in favor of empiricism—has a certain "Alice in Wonderland" quality to it: "If I decide it, it must be pragmatic." This is sort of a

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personalized corollary to the conclusion of the neoclassical economics that Posner employs: "What is, is efficient."

THE "Law" in the title of Posner's opus refers to "a professional totem signifying all that is pretentious, uninformed, prejudiced, and spurious in the legal tradition." Posner's antidote to this totem is legal pragmatism, which he defines as "an approach that is practical and instrumental rather than essentialist—interested in what works and what is useful rather than in what 'really' is." In this, he gets assistance from a surprising source, Cornel West, whom he quotes approvingly as describing pragmatism as "'a future-oriented instrumentalism that tries to deploy thought as a weapon to enable more effective action.'"

Posner's pragmatism is an outgrowth of his rejection of normative legal reasoning. In a chapter entitled "Top-Down and Bottom-Up Reasoning," Posner argues that these are the two dominant styles of modern legal analysis. In top-down reasoning,

> the judge or legal analyst invents or adopts a theory about an area of law—perhaps about all law—and uses it to organize, criticize, accept or reject, explain or explain away, distinguish or amplify the decided cases to make them conform to the theory and generate an outcome in each new case as it arises that will be consistent with the theory and with the cases accepted as authoritative within the theory.

Posner cites one example that is closely associated with his law-and-economics movement: "that the common law is best understood on the 'as if' assumption that judges try to maximize the wealth of society." Bottom-up reasoning, by contrast, is the familiar grist of legal briefs and judicial opinions. It is composed of "reasoning by analogy" and interpretation of statutes according to their "plain meaning."

Posner rejects both approaches to legal reasoning. He dismisses the top-down approach because he believes it is "imprudent, overambitious, excessively contentious, and in the end too inconclusive" to fashion a comprehensive theory of constitutional law. Posner has even less use for bottom-up reasoning, which he claims only pretends to be reasoning. As for statutory interpretation, Posner insists that

> The interpretation of texts is not a logical exercise, and the bounds of "interpretation" are so elastic (considering that among the verbal and other objects that are interpreted are dreams, texts in

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foreign languages and, as we saw in Chapter 9, musical compositions) as to cast the utility of the concept into doubt.

Likewise, while Posner acknowledges that reasoning by analogy has an empirical basis, "there must be a theory," for "one cannot just go from case to case, not responsibly anyway."

Obviously, Posner's "pragmatic" approach to law does not oblige judges to employ that venerable legal maxim *stare decisis*, i.e., respect for precedent. Indeed, Posner allows that "if there are good reasons to break with the past for the sake of the present and the future the judge should not hesitate to do so, just as mature sciences do not hesitate to forget their founders."

IN Posner's view, if judges are to overcome law, they must adopt a pragmatic jurisprudence, which uses all of the instruments in the pragmatist's toolbox—empirical data from science, technology, and mathematics, as well as insights drawn from history, literature, art, and psychology. But, while employing such skills may be second nature to Posner, it is beyond the ken of most judges. Nor can we assume Platonic guardians like the economist's can opener. As Posner himself acknowledges, "It is hardly a surprise that people who have powerful intellects tend to have an exaggerated faith in the power of intellect to solve social problems." Therefore, even if Posner's intellect and stamina will carry him to the pragmatic result in each case, his program is hardly a recipe for lesser federal judges who don't aspire to be philosopher-kings. Indeed, many such judges might well do more harm than good were they to try to rely on all of the extra-judicial implements found in Posner's toolbox.

At times, Posner appears to be at odds with his own conception of pragmatism. In a chapter entitled "What Has Pragmatism to Offer Law?" he refers to Benjamin Cardozo's 1921 opus, *The Nature of the Judicial Process*, as a clear and concise manifesto for legal pragmatism. According to Posner, Cardozo rejected the formalist conception "of law as a body of immutable principles." In Cardozo's words, embraced by Posner, "the thing that counts is not what I believe to be right. It is what I may reasonably believe that some other man of normal intellect and conscience might reasonably look upon as right."

Yet elsewhere, Posner criticizes Harvard philosopher John Rawls for his belief that Supreme Court justices "must appeal to the political values they think belong to the most reasonable understanding of the public conception and its political values

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of justice." For Posner, "the values that all reasonable and rational people endorse make too thin a gruel to resolve the difficult cases." Posner's embrace of Cardozo is not easily squared with his criticism of Rawls, and Posner makes no attempt to do so.

Posner's pragmatism is premised on a "rejection of the idea that law is something grounded in permanent principles and realized in logical manipulations of those principles, and a determination to use law as an instrument for social ends." Such an approach is ill-suited for federal judges, who are primarily responsible for interpreting the Constitution and various statutes. In many cases, the critical decision in a case is the question of who gets to decide the ultimate issue: Congress, an administrative agency, a state, or a private individual.

In *Roe v. Wade*, for example, the key question was whether the state legislature had the right to prohibit early-term abortions. In cases like that, relying on the plain meaning of the Constitution and other relevant documents, and reasoning by analogy, may not result in the most creative or imaginative decisions, but it will generally produce consistent results. And unlike legislators, who are accountable to the electorate on a regular basis, federal judges are accountable only to themselves (save for the unlikely specter of impeachment). Accordingly, we should look to the courts for consistency and place the responsibility for innovation in the law upon the legislative branch. Indeed, even if a pragmatic/empirical approach is correct, it is hard to imagine that the judiciary, the branch of government with the fewest staff and the least funding, is the appropriate agent for implementing it.

THE basic problem with Posner's jurisprudence is that it promotes—indeed requires—judicial activism. In view of a variety of factors from the complexity of our law and society to the moral diversity of our population, Posner argues that the courts have "a responsibility for creative lawmaking that cannot be discharged either by applying existing rules to the letter or by reasoning by analogy." Or as he puts it elsewhere: "I do not object to judges' stretching clauses—even such questionable candidates as the due process clause—when there is a compelling practical case or imperative felt need for intervention." Thus, on the subject of Connecticut's anti-contraception statute, which the Supreme Court struck down in the 1968 case *Griswold v. Connecticut* by locating a right of privacy in the "penumbra and emanations" of the Bill of Rights, Posner

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writes: "It is not the worst thing in the world to have judges who are willing to strike down such laws in the name of the Constitution."

Perhaps the best way of looking at Posner's pragmatism is to evaluate its use for different judges. Were Posner simply writing a guide for common-law judges, who are tasked with deciding fact-based controversies between private parties, often without reference to any statutory authority, his pragmatic approach might lead to the most efficient and, ultimately, the best decisions.

In our system of law, however, most judges (and all federal judges) are obliged to decide cases solely in accord with the Constitution and the statutes promulgated thereunder. Moreover, as we move along the continuum of judging from pure common law to Constitutional and statutory law, it is increasingly important to demarcate bright lines based on the guiding texts. If that means less action, or even inaction, by judges in some cases, then so be it. To follow Posner's approach would mean, in the critical words of Judge Easterbrook, that "it is the readers rather than the writers who matter." But as Justice Felix Frankfurter observed in his famous dissent in a 1943 mandatory flag-salute case, "as a member of this Court I am not justified in writing my private notions of policy into the Constitution, no matter how deeply I may cherish them or how mischievous I may deem their disregard." In other words, not every problem has a solution in the Constitution.

Posner's riposte is that "as the eighteenth century recedes, and the original text becomes a palimpsest overlaid with the amendments of two centuries, not only the vision but the very identity of the framers blurs, and by going clause by clause one could end up with a document that gave answers only to questions that no one was asking any longer." Posner considers this a great problem, and hence, his call for "pragmatic" judging. But it is a problem that the democratic process can repair, either through amendment of the Constitution or through legislation.

The larger problem, which Posner recognizes, is not with the Constitution itself, but with the public's reliance on it as a panacea—a dependence developed over generations of judicial activism. Thus, "Americans like to think that the Constitution protects them even against political enormities that do not fit comfortably into one clause or another." If Posner is truly interested in overcoming law, however, he would want elected legislators—not appointed judges—to address that problem.

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Black Republicans?

ABIGAIL THERNSTROM

YOU'RE black, you're middle class, and you live in an upscale neighborhood. Can the GOP hope to get your vote? And if not today, then perhaps tomorrow? That, in a nutshell, is the important question Michael C. Dawson addresses in *Behind the Mule: Race and Class in African-American Politics*.†

Black voters are now the Democratic party's most loyal adherents—through thick and thin they have rejected Republican candidates. Sure, there have been a few exceptions; for example, Ohio Governor George Voinovich won an extraordinary 40 percent of the black vote in his 1994 reelection landslide. However, roughly 90 percent of African Americans say they're Democrats and cast their ballots accordingly. They also seem to cluster at the left end of the Democratic spectrum. How come? Why can't they be more like whites?

Historic and continuing economic subjugation is the reason Dawson gives. He draws a bleak picture of the American polity and economy as they, in concert, affect blacks. "The Kerner Commission's judgment that the United States was moving toward two societies—one black, one white—is [today] clearly reflected in the American landscape," he writes. Middle-class blacks are thus more black than middle class. Their racial identity continues to leave them vulnerable, and their hard-won status remains fragile. As a consequence, individual blacks see their own fate as tied to that of the race; when the group does well, so will they.

Across the political spectrum, that sense of linked fate, Dawson argues, has had an impact on black political attitudes. While whites are all over the political map, blacks are found only "within the confines of the left." In fact, he suggests, greater black political diversity is likely to be the product not

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of more conservatism but of heightened radicalism. A more sour economy (which Dawson clearly expects), and the have-nots will shift even further leftward. "If poverty continues to spread among African Americans, support for black nationalism and support for economic redistribution could grow rapidly," he warns. Today, black nationalists are a relatively small group; tomorrow, their numbers could greatly increase.

IT'S this last point that got quite extraordinary press attention before the book even appeared. In April 1994, the *Washington Post* carried a story on Dawson's findings (based on survey data not contained in the book) that black America was becoming "more radical." "Eighty-six percent," the *Post* reported, "agreed with the statement 'American society just hasn't dealt fairly with black people,'" and 62 percent said that Louis Farrakhan represented "a positive viewpoint within the black community."

Dawson's alarm was widely and uncritically noted—in the *Baltimore Sun*, the *Phoenix Gazette*, the *Fort Lauderdale Sun-Sentinel*, and elsewhere. And yet, where was the hard evidence that the mood among blacks had actually shifted? That America "just hasn't dealt fairly with black people" is hardly a controversial statement. But have whites been very unfair—or just disappointingly so? Were these respondents echoing the strident, hate-filled voice of a Khalid Muhammad or articulating relatively mild discontent? And who in American society does feel "fairly" treated? What is the standard against which black opinion is to be measured?

In fact, the survey data which made such news didn't square with an important point buried in his book: 96 percent of blacks surveyed in the mid-1980s disagreed with the statement "blacks should whenever possible have nothing to do with whites." It's hard to believe that number has dropped dramatically. It suggests that, while blacks may flirt with going their own political way and believe they will sink or swim together, they know they are a small group in a big country of which they are an inseparable part.

Dawson is part of a bad-news industry that warps our sense of racial progress. (Good news about the status of blacks is the worst message that anyone can deliver, it often seems.) In fact, most black academics and black politicians share an important trait: The coin of their realm is pessimism. Gains are always fragile, fleeting, or elusive. Thus, Dawson describes "the number of African Americans without stable employment"

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as growing and points to black unemployment rates in the 1980s in Illinois and Michigan as "significantly higher than 20 percent." He notes that "African Americans ... are three times more likely to live below the poverty line than whites," and that "nearly 70 percent of these poor families are headed by women." Moreover,

> the decade of the 1980s brought about a powerful reversal in the convergence of [black and white] incomes. In particular, the incomes of black men suffered absolute and relative declines when compared with the incomes of white men.... Black male college graduates and high-school dropouts in the Midwest fared worst....

Etc.

It's a dismal—and misleading—picture. For instance, the number of Americans, both black and white, "without stable employment" did grow in the 1980s; but by how much: 1 percent or 25 percent? Dawson points to black unemployment in Illinois and Michigan, but they were states with unusually high rates. "The result," he says, of that loss of jobs, is a poverty rate three times that of whites. But black poverty, almost everyone acknowledges, is the consequence mainly of the collapse of the black family. Black married couples do well—earning (on average) 80 percent of that which white married couples take in. And that figure does not control for educational attainment, for the much higher fraction of whites who have college degrees. In fact, Dawson neglects entirely the impact of schooling on earnings. In the 1980s, the racial gap in income did widen, due in part to the fact that it was a hard time for the less educated, a category into which black men disproportionately fall.

DAWSON (like almost all commentators on the American racial scene) also exaggerates the difference between blacks and whites on public-policy questions. The political identity of individual American voters is generally remarkably fluid, although admittedly much less so for blacks. As Dawson suggests, blacks tend to vote black. However, he fails to point out that this is true mainly on economic issues. Almost all of his data indicating significant group differences involve employment and related questions. Thus, while 65 percent of blacks and only 24 percent of whites said yes in 1988 to more "assistance to the unemployed," on questions like aid to the Nicaraguan Contras and greater cooperation with Russia, blacks and whites thought alike.

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As a consequence, Jesse Jackson is actually to the left of the average black voter, not only on defense spending but on government aid to blacks and government-guaranteed employment as well. In fact, it also seems to be true of members of the Congressional Black Caucus, although Dawson never discusses the politics of those whom black voters elect to represent their interests (in a book on African-American politics!). Elected from racially gerrymandered majority-black constituencies, members of the caucus are the heirs to the protest politics of the 1960s. They differ from black mayors, who usually run in competitive races in which biracial coalitions are an asset. Most black congressional candidates, on the other hand, are elected in districts designed to be black havens, in which their only real competition is in a black-on-black Democratic party primary. Moreover, their national visibility combined with their relative lack of power encourages ideologically strident stands that play on racial and economic insecurities.

Thus, if black public opinion is moving left, as Dawson believes, it may have little to do with good or bad economic times, and much to do with the pull of African-American politicians who run in settings in which racial and economic militancy pays off politically. Or in which, in any case, candidates are free to engage in the rhetoric of racial and economic justice.

HOWEVER, Dawson is undoubtedly right to believe that, with or without the encouragement of Kweisi Mfume or Jesse Jackson, black political opinion would remain quite liberal. This holds, in part, for reasons Dawson gives: deep-rooted status anxiety on the part of those who have made it into the middle class, and a conviction across the socioeconomic spectrum that expansive government is the indispensable friend of all blacks. Big-tent Republicans can dream of a rainbow coalition, but it's not likely, at least in the near future, that many African Americans will switch to the obviously less-protective party.

The long run may be another story. Consider this possibility: a growing number of black political moderates (or even conservatives) who run and win in majority-white districts. In other words, more candidates like Oklahoma Congressman J.C. Watts, leading eventually to a critical mass of blacks elected as the representatives of moderate-to-conservative whites. It is certainly within the realm of possibility. White voters have

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proven themselves highly receptive to black candidacies; in fact, in cities over 50,000 in population, 83 percent of the black mayors elected over the last 30 years have won office in settings which are *minority* black.

Today, black politicians may be pulling black voters to the left; tomorrow, a new generation with a different political base may swing black voters to the right. It's at least an intriguing thought.

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Unfulfilled expectations

SUSAN KRISTOL

I RECENTLY learned that the principal of my children's elementary school in McLean, Virginia, is reading William Damon's *Greater Expectations*.† This is good news. Damon is an advocate of high academic standards for young people. A champion of the ethic of achievement through hard work, his thesis is that children "thrive on challenges and on chances to prove themselves."

Furthermore, because of who he is, Damon's message is likely to win a hearing among educators. A professor of education at Brown University, the director of its Center for the Study for Human Development, the author of scholarly articles and books on child psychology and educational theory, Damon hails from the inner circles of what William Bennett used to call "the blob"—the nexus of professional educators, bureaucrats, experts, and union officials who wield great power in our schools. And yet, in *Greater Expectations*, Damon the insider presents himself as a critic of the education establishment and the myths it has promulgated.

Damon argues that too many of today's adults have been wrongly persuaded by a host of experts to believe that children are frail, impressionable beings who must never be pushed too hard to achieve. We have been taught that asking children to study hard, to do household chores, or to spend time helping in the community may damage their self-esteem or stifle their creativity, robbing them of their precious, fleeting, childhood years. Exposing children to the world of religious belief, the experts tell us, will harm them by introducing them to concepts too difficult and threatening.

Damon believes that in a well-intentioned attempt to do what is best for children, adults have deprived them of the joys of achievement and the rewards of focusing on things

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outside of, or above, themselves. Once true accomplishment, spirituality, and service to others have been removed from the lives of young people, nothing is left to give them meaning. "Unless we raise standards and expectations for all children in our society," warns Damon, "our affluent communities will turn into places that are just as deadly as the downtrodden ones are today. That is why I take standards, and not material resources, to be the heart of the matter."

NO myth is perhaps so pervasive and destructive in the realm of education and child-rearing, Damon argues, as the myth of self-esteem. Most parents of school children today will be familiar with the obeisance paid to this secular deity. The dogma of self-esteem holds that children cannot begin to succeed in school or in life unless they have a "positive self-image." Not until they feel good about themselves are they free to turn their attention to learning. The most harmful corollary of this view is that difficult subject material must be introduced to children with great caution, even trepidation, because failure to master the material quickly will prove harmful to their self-esteem and prevent any further progress. My husband and I found this to be true several years ago when we asked our daughter's teacher why the class had learned nothing new in math by November. Her earnest reply was: "We go slowly so that the children will feel success."

It is, of course, true that children who have been abandoned or abused by their parents may be too preoccupied to proceed with their studies; they may need the protection and help of social workers and policemen before they can be expected to focus on schoolwork. But most children enjoy striving to meet high expectations and see empty praise for what it is. As Damon explains,

> it is not in children's natures to find challenge stressful, as long as they are given support while facing the challenge. In fact, what children find far more stressful is the expectational vacuum created by a lack of challenge. This is the real risk for today's child—nothing to strive for.

True self-esteem is thus the result of effort and achievement, not the precondition.

Now that the myth of the primacy of self-esteem has taken root in the education establishment's back yard, it has spread like an invasive weed. For over fifteen years, scholarly studies have been available that called into question the conventional

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dogma about self-esteem. Even so, the self-esteem industry is still flourishing, filling the pages of child-rearing manuals, keeping an army of guidance counselors in business, providing the theoretical underpinnings for bilingual education and Afrocentric curricula, and leading Congress to offer hundreds of millions of dollars of funding for programs to stem the (doubtful) loss of self-esteem among adolescent girls.

Herein lies Damon's usefulness. When I complain about the need for a more stimulating curriculum in my children's schools, I can easily be dismissed as another pushy parent. When William Bennett talks this way, he is a moralistic politician. When Chester Finn writes this way, he is a predictable neoconservative theorist. But when William Damon says it, he has a chance of persuading school administrators to adopt his recommendations.

The companion myth to that of self-esteem is the myth of childhood incompetence. Damon deplores the way that children have been presented by the experts: fragile beings, whose lives can be blighted by the failure to bond with their mothers in the delivery room, and whose psyches can be bruised by being asked to work hard on homework or by being exposed to others' religious beliefs. In an attempt to shield children from harm, we deprive them of the opportunity to learn about the world in all its variety. Enslaving ourselves to theories about age-appropriate stages of cognitive development, we are afraid to accelerate teaching lest our students skip a rung on the Piagetian ladder.

Schools have bent over backward in their attempts to allow children to learn at their own pace, to select topics that interest them, and to avoid rote methods like the memorization of facts. But we all know that some subjects must be learned, no matter how boring. Students who are never required to apply themselves to the mastery of something in which they are not interested fail to gain a valuable life skill. Likewise, children whose parents have never expected them to manage routine chores, to behave properly in public, or to contribute to their community will have difficulty facing some of the greater challenges that await them.

THUS the analysis of our problem—what about the cure? Being a good parent has never been easy, but Damon argues that nowadays it is even harder for individual parents to swim against the tide. "Holding the line requires a certain degree of cultural support.... Getting a child to take 'no' for an

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answer is difficult in a cultural setting where children are taught the primacy of their own feelings." Even an expert can falter, as when Damon himself wins a battle with his young children about where to eat lunch only by lying to them that McDonald's is closed on weekends. He recalls the incident with regret but sees it as symbolic of the difficulty of wielding parental authority in an age distrustful of all authority.

Damon proposes two different responses, one in the realm of moral education, the other in the realm of curriculum. In both areas, his prescription is moderate. He urges warring parties to abandon their adherence to ideological polarities (habits vs. moral reasoning, phonics vs. whole language, etc.) and to keep the stridency of political argument far from the educational sphere. Unfortunately, Damon's very moderation, his reluctance to offend, robs his prescriptions of real potency.

For instance, in the area of moral training and socialization, Damon recommends that parents adopt a complex and somewhat daunting process he calls "respectful engagement." In this process, "the parent communicates firm, consistent, and clear expectations to the child in the context of open, two-way dialogues." Parent and teacher must engage the child initially at the level of common interests and gradually move him forward in a "cognitive apprenticeship." At every step, praise and blame must be carefully calibrated by the standard of "minimum sufficiency."

But in the real world, can parents follow these carefully nuanced directions? And are "open, two-way dialogues" really possible between unequal parties? At this crucial point in his argument, Damon seems to back away from genuinely encouraging adults to exercise authority. Meanwhile, in his unwillingness to offend feminist sensibilities, Damon advises mothers not to feel guilty about leaving their infants to pursue their own careers. Does he really expect nannies or day-care providers to tackle all of this "respectful engagement" while both mother and father are busy in the board room?

Similarly, in the area of schooling, Damon advocates moving beyond what he sees as the false dichotomies that have strangled educational reform. Should we teach "thinking skills" or the mastery of facts? We can do both. Should we teach reading through phonics or whole language? We can do both. Should we concentrate on stimulating the brightest students or try to raise the achievement of every child? We can do both. Emphasize self-expression or discipline? Freedom or duty? Rights or responsibilities? New math or rote memorization?

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Intrinsic or extrinsic motivation? Sexual abstinence or a frank discussion of the risks of premarital sex? In all these cases, the answer, according to Damon, lies in a moderate refusal to choose either extreme. In reality, as parents and educators know, such fence-sitting is rarely possible.

Damon's specific recommendations in the area of curriculum reform focus on the newly rediscovered idea of long-term projects carried out by cooperative groups of students. Teachers and students enjoy "an apprenticeship relationship" in a mission-driven activity, with the teacher serving as "a coach who oversees the students' learning by selecting appropriate tasks, diagnosing problems, providing challenges, and offering feedback." The pedagogical jargon gets worse as Damon waxes eloquent over the potential for "higher-order literacies," "epistemic forms," "peer learning," "task-sharing," "thinking dispositions," "performances of understanding," and more.

WHO is to institute these reforms? According to Damon, "Such methods ... rely upon teachers wholeheartedly to endorse and adopt innovative change in their own instructional practice." He expects educators to bring about radical improvements without any change in their structure of incentives and sanctions, even though elsewhere in the book he argues that students cannot be expected to improve without the impetus of external forces.

Most tellingly, Damon rejects out of hand the use of political or market forces like the school-choice movement to bring about reform. Possibly he is right that "putting more pressure on teachers will not automatically endow them with the capacity to teach better." But that is why we may need to combine school choice with other carrot-and-stick reforms—the widespread use of merit pay, the adoption of alternate certification, and the abolition of life tenure for teachers.

If William Damon were a politician, he would perhaps choose to wear a flannel shirt to signal his would-be outsider status. Yet, try as he might, he remains an insider at heart. The public schools are, in his view, the "last best hope" of our society in the face of widespread family breakdown. At a time when many parents are turning away from the public schools in disgust or despair, turning to alternatives like home schooling and "for-pay instruction," Damon is ultimately a defender of the status quo. While his forceful critique of many of our educational fads invites great expectations, in the end, like so many pseudo-outsiders, Damon comes up short.

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Fool's game

JOHN E. BERTHOUD

THE ongoing debate among political economists in the industrialized West over the impact of fiscal and monetary policy on economic growth has been joined by Eastern Europeans who are struggling to set the future direction of their nations' economies. This controversy provides the setting for McGill University economist Reuven Brenner's new work, *Labyrinths of Prosperity*.† Brenner's book is an insightful critique of macroeconomic analysis, adding fresh texture and flavor to the field of political economy.

Brenner's basic supposition is that, because of serious inaccuracies, the use of macroeconomic statistics to fine tune an economy is a fool's game. What are some of the flaws of macroeconomic data? Besides not capturing black-market activity (which in many Western nations could change official statistics by 10 percent to 40 percent), there are problems in analyzing legal economic activity. Two of the most glaring are inaccuracies in the measurement of innovations and substantial cross-national variance in the computation of measures such as price indices (which thus makes it impossible to compare across countries "real" changes in variables such as GNP).

Statistics measuring government aggregates are just as problematic. Putting aside intentional distortions in many countries' taxing and spending figures, Brenner points out that there is a tremendous difference between a deficit that efficiently finances the construction of schools and roads and one that simply wastes money on bureaucrats.

Given Brenner's critique, it is not surprising that, despite intuitive arguments about the negative economic consequences of federal budget deficits, macroeconomists have achieved very limited results in trying to correlate deficits with numerous variables. In *Balanced Budgets and American Politics*, econo-

†University of Michigan Press. 312 pp. $17.95.

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mist James Savage surveys the findings of economists who have examined the relationship of the deficits of the past 50 years with the four most often cited problems: an increase in inflation, an increase in interest rates, a crowding out of investment, and an increase in inflationary expectations. He finds that, for all of these, federal deficits, even the big deficits of the 1980s onwards, have perhaps caused some problems in these areas, but only by very slight amounts. Brenner argues that the relationship between these variables is impossible to determine without understanding government activity qualitatively. It is thus incumbent on those who argue that deficits adversely affect savings rates to show that government wastes money rather than spends it in a true investment-like manner.

In fairness to macroeconomists, there has always been some acknowledgment of these flaws, as seen in the recent highly publicized debates about the accuracy of the Labor Department's measure of the Consumer Price Index. And the political process has, at times, officially recognized qualitative differences in deficits. For example, the Budget Enforcement Act of 1990 explicitly exempted from deficit calculations monies going to the savings-and-loan bailout, on the premise that borrowed money pumped into the banking system cannot by definition lower the nation's savings rate or private borrowers' access to capital.

STILL, Brenner's debunking of macroeconomic statistics provides a nice prism through which to view a number of debates. Full employment means very different things when viewed qualitatively—having a stable private-sector job is very different from being a ditch digger in a communist country. And for public policy in general, Brenner's work reminds us that inputs are very distinct from outputs. How we spend our money on programs such as education, housing, and welfare matters certainly as much (if not more) than the amount we spend. Conservative analysts would certainly agree that how we spend money to further public well-being in these areas, whether through bureaucracies or through the private sector, can lead to very different outcomes.

But for Brenner, the biggest problem with macroeconomic statistics is that economists view these statistics, with their "misleadingly neutral language," as the keys to prosperity. These statistics help justify the establishment of bureaucracies to "manage" the economy, leading to the notion that the economy can be "fine tuned." Even if governments were capable of such

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tasks (which they are not), use of such data to temper the ups and downs of an economy is simply impossible because of the statistical inaccuracies.

Instead of trusting the government to manage the economy using macroeconomic statistics, Brenner argues that the key to economic prosperity can be found through the practice of trade and finance, which can facilitate the commercialization of knowledge. Only when people daringly take risks to bring good ideas to the marketplace do we start down the road to prosperity. Free trade leads to the commercialization of innovations and economic development and growth.

The political setting which best facilitates free trade and finance is one in which people can take risks. Well-defined property rights and an umbrella of law and order have historically been prerequisites for prosperous societies. Monetary authorities should focus first and foremost on the pursuit of price stability. Stable prices create trust among economic actors, a critical consideration for people entering into contracts. Brenner advocates an intellectual agenda similar to what he has undertaken in his work: Political economists should study the features of the successful (and unsuccessful) trading nations rather than endlessly analyze macroeconomic statistics. What they will find is that policies on taxes and regulations, as well as traditions and institutions, are the key elements to understanding whether a society facilitates trade and, thus, prospers.

WHAT is the best way to shed the myths of macroeconomics and turn towards public policies that will create real wealth? Initiatives and referenda, Brenner says. A society run by true popular sovereignty will no longer need to base policies on flawed calculations of economic growth or government debt—the public will be the ultimate judge of what really works. Instead of endless statistics on how much government is spending per pupil or how much government is spending to rebuild infrastructure, what will matter is whether our universities are producing literate students and whether our roads are well-paved or falling apart. With initiatives and referenda, the people can make regular evaluations of policies and evaluate the real composition of expenditures rather than the accounting ones.

In Brenner's ideal state, if the people didn't want intrusive tax and spending policies and central government, they wouldn't have to tolerate them. There would be a greater correspon-

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dence between people's desires for the supply of public services and their actual levels. Lobbyist-driven government would be a thing of the past. With initiatives and referenda, we will still make public-policy errors. But we will avoid the *persistence* of errors.

While Brenner is right that politicians often have incentives that skew decisions (and these incentives may lead to the persistence of errors), there are clearly limits to the role of initiatives and referenda. In our complex post-industrial age, areas such as foreign policy, monetary policy, and defense strategy require management by political and policy experts. Even a much better educated and more involved public could, at most, provide broad direction to elected leaders in many of these areas. Further, state experiences with initiatives and referenda indicate that Brenner's hopes for a diminution of the role of interest groups may not materialize.

What is the likely impact of Brenner's book? A nation wedded to economic statistics, such as the United States, will not likely give up reliance on macroeconomic data very quickly. Perhaps, at a minimum, Brenner's work will promote greater public skepticism in their views about economic data. And his work is certainly another contribution to the literature arguing for a larger role of the citizenry in the making of public policy. Shedding myths and the pretentious language of macroeconomics provides for a greater public involvement in the great decisions of political economy. This is something needed in the industrialized West and the nations of Eastern Europe as they try to create market economies.

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Radical chic

JONAH GOLDBERG

"IN America," remarked Oscar Wilde, "the young are always ready to give those who are older than themselves the full benefit of their inexperience." As one might expect, this tendency manifests itself most often on America's college campuses, and not always for the worse. For example, a King's College (later Columbia University) student activist named Alexander Hamilton helped incite the mob that hounded the school's president onto a British warship heading back to England. Of course, some frown at the immature excesses of America's youth. In 1822, after enduring numerous protests, riots, and demonstrations, President Cooper of the College of South Carolina complained, in a letter to Thomas Jefferson, "Republicanism is good, but the rights of boys and girls are the offspring of Democracy gone mad."

Witnessing the effect of the 1960s on America's universities, some today might agree with the beleaguered President Cooper. Not Paul Rogat Loeb, author of *Generation at the Crossroads: Apathy and Action on the American Campus.*† Loeb seeks to demonstrate that only students who sit-in, act-up, or march-on can realize their full human potential. Students who don't protest—he calls them "adapters"—may not be completely morally deficient, but for Loeb they are close. By being "politically silent," adapters endorse a "carnivorous individualism," which allows America's political system to remain "largely a feeding ground for the greediest."

For Loeb, "conservative activist" is, for the most part, an oxymoron. To be an activist requires concern, and concern is apparently a liberal or leftist virtue. Loeb tries to prove these assertions, and many others, by visiting campuses across the country and reporting on the state of student activism.

Loeb himself is something of a peripatetic evangelist of the

†Rutgers University Press. 460 pp. $24.95.

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Left. A former 1960s activist, he has spent much of the last 15 years giving lectures on the evils of nuclear weapons, the Strategic Defense Initiative, the Central Intelligence Agency, avaricious multinationals, and other engines of America's "omnipresent crises." Judging from this book, there seem to be only two lines of argument in Loeb's lectures: the old—capitalism and its dark prince, America, are bad, and the tired—Ronald Reagan and George Bush were *especially* bad.

WHILE *Generation at the Crossroads* is something of a piñata—bash it from almost any angle and your efforts will bear some reward—there are three areas in need of special attention. The first is its advocacy of the idea, embraced by many activists on the left, that the politicization of life is a vital end, while the pursuit of the truth is simply an expedient means.

The most glaring example of Loeb's indifference to truth is his discussion of a racial incident that tore apart Emory University in 1990. In a chapter entitled "A House Still Divided," Loeb chronicles the persecution of a black student whose dormitory room was ransacked and vandalized with racially derogatory graffiti. The campus exploded. Black activists excluded sympathetic whites from an emergency meeting, preventing a unified response, and then somewhat disingenuously co-opted white support for a laundry list of demands on the administration, including an African and African-American studies center with its own library, archives, and independent faculty.

Alas, it turned out that the "victim" had manufactured the "attacks" herself (a fact withheld from the reader for almost 30 pages). Loeb dismisses this revelation as irrelevant because "other racial harassment has unquestionably occurred again and again, at colleges nationwide." If similar *authentic* racist incidents indeed abound, it is curious that Loeb found it necessary to build the only chapter he devotes to campus racism around an admittedly fraudulent example. It is especially unfortunate that he impugns students who were reluctant to protest the "attack" as abettors of racism.

Anticipating this sort of criticism, Loeb argues that "America's most pervasive assaults on human dignity cannot be remedied" simply by determining (in the words of one black activist at Emory) "who wrote what in someone's room." Besides, argues Loeb, positive results stemmed from the incident. Discussion of race was intensified in the classrooms and cafeterias, plus Emory got a new multicultural center and, later, a women's

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center and a gay and lesbian center—an embarrassment of riches.

The Emory episode illuminates a sad fact of life in the world of higher education: American colleges are addicted to race talk. The academic establishment and, ironically, the liberal students who continue to protest against it are convinced that what is desperately needed to ameliorate the racial climate is a broader and more frank "conversation" about race. They might be right, but that isn't what students get, despite the fact that almost every course in the humanities makes some room for discussion of race.

Instead, students are usually fed a steady diet of platitudes about white oppression and heroic black defiance. When students are taught that the coin of the realm is race and rage, invariably some will spend that currency on self-aggrandizement and controversy. That the universities could use a great deal less race talk after years of furor over affirmative action and political correctness eludes professors, administrators, and Loeb.

NOT surprising, then, is Loeb's second major theme: the "myth" of political correctness. Loeb dubs critics of political correctness "P.C. Baiters." A cadre of corporate cronies, the P.C. Baiters supposedly have fooled the American public by presenting academia's attempt to become more inclusive and humane as a "false dilemma." The Baiters know who they are, Loeb assures us, and if you've recently contributed to *Commentary*, *National Review*, the *New Criterion*, or *The Public Interest*, you are a likely suspect.

The big lie of political correctness, according to Loeb, is the conservative fantasy of "tenured radicals" running the academy. In his eyes, most professors are moderates, if not genuine reactionaries. A "good" professor fulfills his moral responsibility by exhorting students to protest and organize against America's bankrupt institutions. The fact that some universities don't actively encourage professors to use their podium as a pulpit is an indicator, Loeb believes, of academia's deep-seated conservatism.

A third theme revealed in *Generation at the Crossroads* is a peculiar convergence between the Left and the Right. Loeb frets over the globalization of the economy and the uncertainties it engenders. Sounding a bit like Pat Buchanan, Ralph Nader, and others who wring their hands over the "anxious class," Loeb argues for restoring local communities and forc-

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ing big businesses to eradicate the fears of the working middle class. Loeb's declaration that a "humane society needs businesspeople who respect efforts by workers and communities to organize and gain greater say in their circumstances" sounds somewhat similar to Charles Murray's call for the restoration of a "valued place" for everyone.

It is true that, in the wake of the debates over universal health care, NAFTA, and GATT, as well as the 1994 Congressional elections, an embryonic, yet startling, consensus over the need to "protect" the middle class emerged. Writers such as James Fallows and Edward Luttwak have garnered a sympathetic audience from certain quarters of the Left and the Right with their arguments for increased government efforts to cushion the chaotic effects of global capitalism. Virtually the entire debate over the 1994 crime bill, and much of the debate over health care, was framed in terms of which party could deliver greater personal "security." Indeed, the conservative emphasis on family, neighborhood, and school has always been, in large part, a call for a more ordered and secure (i.e., traditional) lifestyle.

The difference, of course, is that conservatives like Murray reasonably argue that the valued places have been eroded by too much politicization, characterized by concomitant petitions for greater government involvement in our daily lives. Obviously Loeb, and the Left in general, believe the reverse. Still, there is less sunlight between these segments of the Right and Left than one might think.

But whatever level of government interference the two political parties finally do agree upon, it will most assuredly not be high enough for Loeb. This is best demonstrated by Loeb's criticism of volunteerism. Community and religious service groups do good things, Loeb concedes, and they are helpful in motivating young people toward political action, which is even better. But, he worries that volunteer projects

> take the heat off of corporate and governmental leaders who continue to slash human resources while America's problems steadily bleed. They can lead service volunteers directly away from asking how America's root social choices continue to betray the very communities they work to serve.

In other words, running a midnight basketball program is fine just so long as it doesn't keep the movement from lobbying the federal government to run one.

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LOEB believes that a major theme of his book is why some students become activists. This is indeed a fascinating question, deserving serious attention. Why did student uprisings erupt virtually simultaneously during the 1960s in countries as dissimilar as France, Indonesia, Czechoslovakia, Poland, Senegal, South Korea, Mexico, and the United States? Why do American university students, the greatest beneficiaries of society's wealth and care, so often bite the hand that feeds them? To get closer to the answers of questions like these, one must first read Seymour Martin Lipset's *Rebellion in the University*, written almost 25 years ago and still the definitive work on the subject. *Generation at the Crossroads* adds little to Lipset's effort because Loeb's answer is very simple: Students tend to protest more as they approach agreement with the romantic mythology of Paul Rogat Loeb.

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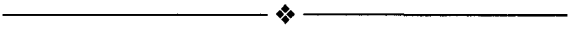

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Daniel Patrick Moynihan
in Number 102

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Organs for Sale?
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in Number 108

The New Sound of Music
Michael Medved
in Number 109

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in Number 111

Teaching the Virtues
Christina Hoff Sommers
in Number 111

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James Q. Wilson
in Number 112

A Nation of Cowards
Jeffrey R. Snyder
in Number 113

Does Welfare Bring More Babies?
Charles Murray
in Number 114

Execution by Quota?
Stanley Rothman & Stephen Powers
in Number 116

A De-Moralized Society
Gertrude Himmelfarb
in Number 117

A Symposium: The Question of Black Crime
John J. DiIulio, Jr.
Comments by:
Glenn C. Loury, Paul H. Robinson, Richard T. Gill, Patrick A. Langan, & James Q. Wilson
in Number 117

A Reply: White Lies About Black Crime
John J. DiIulio, Jr.
in Number 118

Immigration and the American Future
Nathan Glazer
in Number 118

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in Number 119

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